Central Intelligence Agency

Washington, D.C. 20505

April 1992

The Honorable John Conyers, Jr.
Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Director has asked me to respond to your letter of April 6, 1992 requesting certain information regarding CIA holdings of records related to the assassination of President Kennedy. We do have a significant number of records relating to the assassination of President John F. Kennedy, although many of these records were originated by the FBI or by investigating committees of the Congress. We believe that a significant portion of our records could be released if H.J. Resolution 454 were enacted into law.

I should also point out that the Central Intelligence Agency is currently embarking on its own review of assassination records. I would expect that this review will result in the public release of a significant body of information.

To help the committee understand the nature and number of CIA records pertaining to the assassination, I am enclosing the answers to the specific questions you raised in your letter.

Sincerely,

Stanley M. Moskowitz
Director of Congressional Affairs

Enclosure

13-00000

The Honorable John Conyers, Jr.

SUBJECT: Agency Records on the JFK Assassination

OCA/LEG/DMPearline:rw 23 April 1992 (OCA 1123-92)
(OCA 1123-92/1)
(OCA 1123-92/2)

Original - Addressee (w/enclos)
1 - DCI
1 - DDCI
1 - ExDir
1 - ER
1 - D/OCA (w/enclos)
1 - DMPearline Signer (w/enclos)
1 - OCA/LEG Subject File (w/enclos)
1 - OCA Record (w/enclos)
1 - D/Center for the Study of Intelligence (w/enclos)

OCA 1123-92

1. Did the CIA retain possession of records requested by or developed on behalf of the House Select Committee on Assassinations? If so, how many pages of such records does the Agency have in its possession? What is the nature of these records?

Yes, the CIA retained possession of records requested by or developed on behalf of the House Select Committee on Assassinations (HSCA). The Agency has approximately 300,000 pages of such records which include microfilm of CIA's Oswald file (originally collected in response to the Warren Commission's inquiry, then added to) as well as records collected in response to specific requests from the HSCA. Although these records cover a wide variety of topics, they principally focus on CIA operations against Cuba and Castro, Lee Harvey Oswald's sojourn in the USSR, and Oswald's activities in Mexico City and New Orleans. The vast majority of documents pertaining to Oswald were created in response to specific inquiries from the Warren Commission and HSCA. They also include a large number of name traces requested by the HSCA staff, as well as materials relating to the Garrison investigation, Watergate, Cuban exile activities, and copies of FBI reports relating to Oswald. Because the HSCA was also investigating the assassination of Dr. Martin Luther King, Jr., there is also some material on the Black Panthers and the civil rights movement.

2. Does the CIA have records outside of those related to the HSCA that may be considered relevant to the assassination of President Kennedy? If so, please describe such records and the approximate number of pages.

The CIA responded to requests from the Warren Commission and the HSCA (approximately 300,000 pages, see above). The CIA has never, however, attempted to locate every document bearing on every conceivable angle or theory relating to the assassination of President John F. Kennedy. If the Agency were asked to explore newly advanced theories, the search for documents could be a rather large undertaking involving the review of thousands of additional documents. To conduct any further search, CIA would require specific guidelines describing the kinds of records sought.

3. Did any of the records described in questions 1 and 2 originate with the FBI? If so, approximately how many?

about 30

We believe that between 40 percent ~~and 50 percent~~ of the records described in questions 1 and 2 originated with the FBI.

13-00000

4. Did any of these records originate with any other Federal, foreign, state, or local agency? If so, please describe which agencies and the approximate numbers.

A small number of CIA's records pertaining to the assassination of JFK, probably less than 5%, originated with the State Department and the Immigration and Naturalization Service. Another small number of records, also less than 5%, are original HSCA records stating Committee requests to CIA.

5. How many of these records have been reviewed for release under the Freedom of Information Act(FOIA)? How many of these records have been released pursuant to such requests?

CIA has released 7,432 pages of records pertaining to the assassination of JFK, representing 1,969 documents, under the FOIA. There is no documentation of how many JFK assassination records CIA has reviewed under FOIA.

6. In the estimation of the CIA, approximately how many records would be released under the standards contained in House Joint Resolution 454?

It is very difficult to estimate the number of documents that would be released if the Joint Resolution passed because consideration for protection of classified information and other sensitive categories of information would be required on a document by document basis. We would review our holdings carefully to ensure that the maximum amount of information is released, consistent with the DCI's responsibility to protect intelligence sources and methods and with privacy interests of individuals involved.

13-00000

APR 21 '92 11:20

UNCLASSIFIED

CENTRAL INTELLIGENCE AGENCY
DCI History Staff
316 Ames Building
Washington, D.C. 20505
Phone (703) 351-2621

FACSIMILE TRANSMISSION COVER SHEET

TRANSMITTED DATE: 4/21/92 PAGES TRANSMITTED 8
(cover sheet included)

TRANSMITTED TO:

NAME: JOHN PEREIRA

ORGANIZATION: OGC

BLDG, ROOM

TELE/EXT: 76160 (FAX 874 3208)

SUBJECT: OCA LETTER (W/ENCL) & INR MEMO (W/O ATT.) & CIA HS DRAFT MOU WITH STATE

TRANSMITTED FROM:

NAME: KEN McDONALD

BLDG, ROOM: 316 AMES

TELE/EXT: 30147 (FAX 522 9280)

MESSAGE:

John – The OCA letter (which David Pearline sent us yesterday) has my suggested changes on it. I think I sent you an earlier draft of our proposed access memo of understanding with State, to which the Wilcox memo refers. Ken

UNCLASSIFIED

13-00000

Central Intelligence Agency

Washington, D.C. 20505

The Honorable John Conyers, Jr.
Chairman
Committee on Government Operations
United States House of Representatives
Washington, D.C. 20515

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3. Did any of the records described in questions 1 and 2 originate with the Federal Bureau of Investigation? If so, approximately how many?

We believe that between 40% and 50% of the records described in questions 1 and 2 originated with the Federal Bureau of Investigation.

4. Did any of these records originate with any other Federal, foreign, state, or local agency? If so, please describe which agencies and the approximate numbers.

A small number of CIA's JFK assassination records, probably less than 5%, originated with the State Department and the Immigration and Naturalization Service. Another small number of records, also less than 5%, are original HSCA records stating Committee requests to CIA.

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APR 22 '92 08:48

P.4

20 APR 1992

ER 92-2346

JOHN GLENN, OHIO, CHAIRMAN

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United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

April 14, 1992

The Honorable Robert M. Gates
Director
Central Intelligence Agency
Washington, D.C. 20505

CIA HAS NO OBJECTION TO DECLASSIFICATION AND/OR RELEASE OF CIA INFORMATION IN THIS DOCUMENT

Dear Director Gates:

I am please to learn that you will be testifying before the Committee on Governmental Affairs on Tuesday, May 12, 1992. The hearing will begin at 9:00 a.m. and be held in Room 342 of the Dirksen Senate Building. The subject of the hearing will be the "Assassination Materials Disclosure Act of 1992." The legislation proposes to create an independent review board to govern and coordinate the release of government information relevant to the assassination of former President John F. Kennedy. As required by Commmittee rules, please have 100 copies of your written testimony delivered to the Committee by close of business, Friday, May 8, 1992. While your written testimony may be as long as you wish, please plan to limit your spoken testimony to five to seven minutes in length.

Your testimony will be extremely helpful to the Committee and to the Congress as it considers this important legislation. While you may discuss whatever aspects of the legislation you desire, particularly how it relates to the records and resources of your agency, the Committee would appreciate learning your views on several specific subjects:

What are the reasons which the Central Intelligence Agency has records related to the assassination of President Kennedy?

What have the methods been to date for the identification and definition of Central Intelligence Agency records as material related to the assassination of President Kennedy?

What steps has the Central Intelligence Agency made to assess the scope of relevant documents outside of materials requested by earlier investigative or other official committees or commissions, or through the Freedom of Information Act?

What is the volume of material which you might recommend be released to the public without concern for further postponement?

Would you be opposed to a provision requesting agencies, whenever possible, to self-certify materials which may released without agency objection?

What recommendations can you make with regard to the need for interagency working groups to identify third-agency records in agency files, to avoid duplication, and to assist in the efficient disclosure of information to the public?

What are the logistical, manpower, and resource concerns that you have with regard to the review and release of assassination material?

Thank you for your assistance and consideration. I look forward to seeing you on May 12th. In the event that you have any questions, please do not hesitate to contact me. Your staff has already been very helpful to the Committee in its preparation for the hearing. They may also contact Dr. Leonard Weiss, Staff Director, or Steven Katz, Counsel, at 202-224-4751.

Sincerely,

John Glenn

John Glenn
Chairman

JHG/sk

HEARING
before the
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
on
S.J. Res. 282:
THE ASSASSINATION MATERIALS DISCLOSURE ACT OF 1992

Tuesday, May 12, 1992
9:00 a.m.
Room 342 Dirksen Senate Office Building

WITNESS LIST

* * * *

Panel 1:

The Honorable David L. Boren
United States Senator (D-OK)

The Honorable Arlen Specter
United States Senator (R-PA)

The Honorable Louis Stokes
United States Representative (D-OH)

* * * *

Panel 2:

The Honorable Robert M. Gates
Director
Central Intelligence Agency

The Honorable Williams Sessions
Director
Federal Bureau of Investigation

* * * *

Panel 3:

James Lesar
President
Assassination Archives and Research Center
Washington, D. C.

Professor Ernest May
Kennedy School of Government
Harvard University
Cambridge, Massachusetts

Professor Athan Theoharis
Department of History
Marquette University
Milwaukee, Wisconsin

* * * *

13-00000

HEARING
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SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
on
S.J. Res. 282:
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Tuesday, May 12, 1992
9:00 a.m.
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W I T N E S S   L I S T

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* * * *

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James Lesar
President
Assassination Archives and Research Center
Washington, D. C.

Professor Ernest May
Kennedy School of Government
Harvard University
Cambridge, Massachusetts

Professor Athan Theoharis
Department of History
Marquette University
Milwaukee, Wisconsin

* * * *

4/22/92

OUTLINE OF TESTIMONY ON JFK RESOLUTION

A. Agreement with Principles of Legislation.

1. Favor disclosure of as much material on JFK as is consistent with protection of intelligence sources and methods.

2. Established own declassification program. Presumption will be in favor of disclosure.

3. Pledge to cooperate with any reasonable mechanism to declassify documents.

B. Describe Nature and Amount of Records.

1. Reasons for having records.

2. Volume of existing material and who it belongs to.

3. How we have identified material related to JFK assassination.

C. How Much Material Can be Released?

1. Give estimate of amount of material to be released under CIA program or resolution.

2. Describe material that could not be disclosed.

   a. Example of Intelligence Sources and Methods that would require withholding.

   b. Example of material the release of which would invade privacy.

3. Describe resources--manpower and funds-- to achieve results.

D. Concerns with Resolutions.

1. Address only Intelligence Community Concerns. Will defer to DoJ on Constitutional objections.

2. CIA or other agencies that originate documents should conduct initial review of material to determine whether it can be released. Material withheld from public release could then be made available to Review Board.

3. Agencies that originate information should be allowed to review it for release even if that information is contained in a document prepared by another agency or Congress. Suggest interagency working group to handle coordination issues likely to arise with disclosure of third agency documents.

4. Will cooperate with any request by the Board for additional material that has a reasonable relationship to the assassination.

5. Would hope that the Board will consult with DCI before using subpoena power to compel production of material that involves sensitive intelligence sources and methods.

5. Exemptions need to be clarified so as to ensure that deliberative process information and identities of covert employees are protected.

E. **Conclusion:** Pledge to cooperate with whatever mechanism is established to declassify material. Hope that this effort will help to dispel myths regarding JFK assassination.

OCA 2034-92
1 May 1992

MEMORANDUM FOR THE RECORD

SUBJECT: House Government Operations Committee Hearing on H.J. Res. 454 (JFK Materials Resolution)

1. On 28 April, the undersigned attended a public hearing on the proposed Assassination Materials Disclosure Act conducted by the House Government Operations Legislation and National Security Subcommittee. Majority Committee/Subcommittee Chairman Conyers and Ranking Minority Member Horton were present for the entire hearing; majority Subcommittee members English, Neal, Peterson, and Thornton and minority members Shays and Schiff and full Committee member Martinez attended at least part of the hearing. The Committee's Press release, which criticizes the government and particularly CIA as releasing JFK-related documents "at a snail's pace", and witness statements are attached.

2. The hearing was well attended by the public and attracted much media coverage. Eight witnesses testified in four groups: Congressmen Louis Stokes (assisted by Robert Blakey, former counsel to the House Select Committee on Assassinations) and former HPSCI Chairman Lee Hamilton testified first. The congressmen were followed by the movie "JFK"'s director Oliver Stone, who was followed by Howard Willens, Counsel to the Warren Commission, and James Johnston, Counsel to the Church Committee. The session closed with a panel comprised of Ms. Leslie Harris, Chief Legislative Counsel for the Washington office of the ACLU; Dr. Herbert Parmet, Professor of History, Queensborough Community College and Graduate School of the City University of New York, and Dr. Harold Rellyea, American National Government Specialist at the Congressional Research Service.

3. Chairman Conyers advised in his opening remarks that the Committee wanted to hear from the Executive branch and thus would hold another hearing session. He noted that "after much negotiation," the Director of Central Intelligence would be testifying in mid-May. He further noted that the Committee also hoped to hear from the Attorney General, but negotiations with the Justice Department were still ongoing. Conyers was criticized of the DoJ at the outset, noting that the Committee had

received a long, single-spaced letter from Justice detailing numerous "legalistic" objections to the resolution, which he characterized as not reflecting a real willingness to work together to release the documents to the American people.

4. The general tone of the session was strongly in favor of the resolution and disclosure of the vast majority of the material. Most witnesses conceded that there might be some materials that required postponement of disclosure, but the bias was clearly toward disclosure. Even Oliver Stone, in response to a comment from Congressman Shays that he (Shays) found it hard to imagine what national security or privacy issues would persist after 30 years, conceded that there might be some exceptions, but Stone thought 98 percent of the material could be released. Several witnesses, including Congressman Stokes and Church Committee counsel, suggested that most national security information should be released under the resolution, but that privacy interests posed greater concerns. Congressman Hamilton warned that the Congress should be careful that nondisclosure "loopholes" do not "swallow up the bill," which is why he said that review by an independent board was so important.

5. Stone's testimony had quite an impact on the hearing. Several congressman and witnesses credited his movie "JFK" as "the reason we are all here today." Chairman Conyers appeared particularly impressed with Stone, describing his testimony in exchanges with later witnesses as "persuasive" and "compelling." A few potentially tough questions were thrown at Stone--did he not over-lionize Garrison; how much research did he do for the movie and did he seek to talk to or obtain information from the government as part of his research process? However, there was no aggressive follow-up to Stone's answers. Discerning observers may have picked up on the fact that Stone's "research" seemed tailored to and limited by pre-conceived conspiracy theories. (For example, when asked if he had talked to President Ford, a member of the Warren Commission and advocate of disclosure of the JFK documents, Stone answered no--that it was pretty obvious where Ford stood as a proponent of the lone gunman theory.)

6. When asked about his personal views, Stone said he believed that there were two conspiracies. The murder conspiracy was small and covert--perhaps involving no more that five to ten people--and was led by the "intelligence agencies." Stone did not mention CIA by name at this point.

Subject: House Government Operations Committee Hearing on H.J. Res. 454 (JFK Materials Resolution)

He mentioned Oswald's alleged ties to naval intelligence, and also said that a closer look should be taken at an operation "MONGOOSE" and a Colonel Landsdale. He also posited a bigger "cover-up" conspiracy after the fact, spearheaded by President Johnson (who Stone alleged told Earl Warren he would be responsible for World War III if the Commission tied the Cubans into a conspiracy). Stone theorized that a much broader "Establishment", while not directly involved in the assassination, was not sorry to see Kennedy go because he was an agent of profound change embarking upon several courses that disturbed that "Establishment", including pulling out of Vietnam. In response to a later question about various theories, Stone called the Mafia theory a "red-herring." Stone said "as you know, the CIA has always used the Mafia for plausible deniability" and that it was important to look behind the Mafia at "who pulls the strings."

7. Other matters of Agency interest discussed include that both the Warren Commission attorney and particularly the Church Committee attorney castigated CIA for "lying" to the Warren Commission. The particular example offered had to do with "AMLASH." This individual came up in connection with traces the Agency apparently conducted for the Warren Commission. CIA purportedly had a relationship with AMLASH in connection with a Castro assassination plot, but did not make this fact known to the Warren Commission. The witnesses characterized this as pertinent information CIA consciously withheld from the Warren Commission. Also, when the final panel engaged in a broader discussion of government disclosure and FOIA with the subcommittee, the ACLU held up the CIA Openness Task Force report as an example of why FOIA was a "dismal failure" as the mechanism to "vindicate t public's right to know." (On 18 March Conyers rigorously questioned Gary Foster on the task force report when his subcommittee held a hearing on "Government Secrecy After the Cold War.")

8. A major recurring theme was concern that, despite the need to make the documents publicly available, the Administration would not support the resolution and it could be vetoed. Congressman Hamilton stated that, if the resolution were vetoed, he hoped that at minimum the House would pass a resolution to release its own records. (Such an action would be problematic for the Administration, because much Executive branch information is contained in House records, and the House also probably considers documents obtained from Executive agencies as part of its

Subject: House Government Operations Committee Hearing on H.J. Res. 454 (JFK Materials Resolution)

records.) Most witnesses thought the Congress should try to avoid a constitutional confrontation with the Administration, however, and a few practical suggestions to help work around problems were made. For example, the ACLU suggested that the Review Board might be modeled after the Advisory Committee established in connection with the State Department's preparation of the Foreign Relations of the United States (FRUS) series, with which CIA's historical staff is familiar. This body was established by a provision included in last year's Foreign Relations Authorization Act.

9. In conclusion, the hearing did not get into much detail on provisions of the resolution. Much time was spent on general propositions like the fact that the documents ought to be released and why, and matters tangential to core issues raised by H.R. 454.

Victoria L. Pepper
Assistant General Counsel
Office of Congressional Affairs

13-00000

SECRET

4 May 1992

TABULATION OF PAGES IN THE OSWALD PRE-ASSASSINATION FILE:

NOT A PART

ADDED LATER

Pages	Date	Description
1	6 Mar 64	Note-slip on DECLASSIFIED version held in NARA
4	30 Jan 76	CIA transmittal sheet, with NARA's query of 15 Jan 75 on deleting #s.
1	6 Mar 64	DD/P transm sheet, re NARA's holding.
4	6 Mar 64	Helms Memo to Rankin, describing file contents.
5	6 Mar 64	Copy of above, with Helms note to Rankin.
1	31 Oct 59	State Cable from Moscow to SecState.
1	"	Redacted copy of same.
1	1 Nov 59	Press clipping
1	2 & 4 Nov	Notes on Oswald & Papich (FBI) query
3	2 Nov 59	Fon Sv Despatch, fr Moscow to Dept
1	9 Nov 59	State Cable, Moscow to SecState
1	"	Redacted copy of same
1	9 Nov 59	State Cable, Tokyo to SecState
1	"	Redacted copy of same
1	16 Nov 59	Press clipping
1	26 Nov 59	Press clipping
1	25 May 60	Cover Memo fr Dir Hoover, FBI, to Helms
7	12 May 60	Attachment to above
2	12 May 60	FBI report, fr Dallas
2	25 Oct 60	State (Cumming) to Helm, listing US defectors
2	"	Redacted copy of same
1	3 Nov 60	DD/P Bissell to State (Cumming)
1	"	Redacted copy of same
1	18 Nov 60	Cover Memo (internal) to DD/P, to accompany draft reply to Cumming
1	undated	Handwritten descrip of letter cited above
2	21 Nov 60	Cover letter, Bissell to Cumming, on US defectors
1	"	Declassified version of Oswald info from ff
7	"	List of US defectors attached to Bissell letter
1	18 Nov 60	Memo fr Horton, acting C/CIS, to Bissell
9	21 Nov 60	Second copy of Bissell letter and list, above
2	9 Dec 60	2 copies of redacted request to set up Oswald 201
3	11 Jul 61	Fon Sv Despatch, Moscow to Dept
4	26 May 61	2 copies of Fon Sv Despatch, Moscow to Dept
1	13 Apr 61	DeptState Instruction on Oswald citizenship and passport (signed Rusk)
1	26 Jan 61	State MemCon re Oswald
1	"	Redacted copy of same
14	13 Jul 61	Cover letter to Helms fr Hoover, plus several FBI reports, much of which is illegible
1	28 Sep 61	Short bio of Marina (redacted), for inclusion in Oswald 201
4	13 Oct 61	Fon Sv Despatch, Moscow to Dept, covering copies of four Oswald letters to Embassy Moscow
1	7 Dec 61	Form fr INS to DD/P, asking for any derog info on Oswald

SECRET

~~SECRET~~

1	3 Mar 62	Note saying Navy message of this date is missing from CD 692 sent from Archives	
5	26 Apr 62	Collection of Navy Memo to Hoover/FBI plus Navy, USMC, and press items	
9	7 Sep 62	Hoover to Helms, plus report fr SAC/Dallas	
2	"	Redacted pages from above	
7	10 Sep 63	FBI field report on Oswald from Dallas	
3	24 Sep 63	FBI field report on Oswald from New Orleans	
3	10 Sep 63	FBI field report on Oswald from Dallas (apparently different from above)	
2	8 Nov 63	Hoover to Helms, with page from New Orleans report	
20	7 Nov 63	Hoover to Helms, with a lot of bio data on Oswald, plus Fair-Play-for-Cuba stuff	
20	25 Oct 63	FBI to INS, New Orleans, with much of material above	
14	31 Jan 64	Report, not really contemprary with this file, entitled: "Information Developed by CIA on the Activity of ...Oswald in Mexico City..," 28 Sep--3 Oct 63	DUPLICATED & ADDED LATER
14	"	Redacted copy of same	

~~SECRET~~

13-00000

OCA 2050-92
6 May 1992

MEMORANDUM FOR: Director of Central Intelligence

FROM: Stanley M. Moskowitz
Director of Congressional Affairs

SUBJECT: JFK Testimony

1. Attached is a copy of your opening statement for the 12 May hearing before Senate Governmental Affairs Committee on the JFK Joint Resolution. Because we are commenting on legislation, Executive Branch guidelines require us to submit the testimony in advance to OMB for Administration clearance. We also intend to provide your opening statement in advance to the DoJ and FBI. As you know, Director Sessions will be joining you for a panel presentation before the Committee.

2. Please let me know whether you have any objections to release of your statement to OMB, DoJ, and the FBI. The Committee has requested that an advance copy of your statement be provided to them by 8 May.

Stanley M. Moskowitz

Attachment:
as stated

Draft 5/6/92

STATEMENT OF ROBERT M. GATES

DIRECTOR OF CENTRAL INTELLIGENCE

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

12 MAY 1992

Mr. Chairman, I am here today at your request to provide my views on Senate Joint Resolution 282, "The Assassination Materials Disclosure Act of 1992," and to describe the nature of documents held by the CIA that relate to the assassination of John F. Kennedy. I very much appreciate the opportunity to speak on this important matter.

Let me begin by stating that I am in complete agreement with the purpose underlying the joint resolution--that efforts should be made to declassify and make available to the public as quickly as possible government documents relating to the assassination of John F. Kennedy. We hope that opening up and giving journalists, historians and, most importantly, the public access to governmental files will help to resolve questions that still linger ~~even~~ over 28 years after the assassination. Further, I believe that maximum disclosure will discredit the theory that ~~the~~ CIA had anything to do with ~~participated in~~ the murder of John F. Kennedy.

Even before introduction of this joint resolution, I recognized the need for greater public access to CIA documents of historical importance. Two months ago, I announced the establishment of a new unit within CIA that will be responsible for declassifying as many historical documents as possible consistent with the protection of intelligence sources and

methods. This new unit, the Historical Review Group, in the Agency's Center for the Study of Intelligence, will review for declassification documents 30 years old or older, and national intelligence estimates on the former Soviet Union that are 10 years old or older. In addition to the systematic review of 30-year- old documents, I have directed the History Staff in the Center for the Study of Intelligence to assemble CIA records focusing on particular events of historical importance, including the assassination of President Kennedy. The Historical Review Group will then examine the documents for the purpose of declassifying the records. ~~[As we speak this Group has]~~ already begun its review of the documents related to the assassination of President Kennedy, and I am glad to report that the first group of these records, ~~which includes~~ *including* all CIA documents on Lee Harvey Oswald prior to the assassination, has been declassified and transferred to the National Archives for release to the public.

Because of high interest in the JFK papers, I am not waiting for legislation for other agencies to start declassifying documents belonging to CIA. The Historical Review Group, at my direction, has

Can we give some idea of #? Is it limited only to the 37 documents cited on the next page? If so, that's not good enough. I thought Ken said there were several "easy" boxes that could be processed quickly.

As we carry out our program to declassify Kennedy assassination documents, we will use a presumption in favor of releasing as many documents as possible. In fact, I recently approved new CIA declassification guidelines for our Historical Review Program which ~~have~~ *specifically direct* a presumption in favor of declassification. I believe we can be very forward leaning in making these documents available to the public, and I have instructed the Historical Review Group to ~~do~~ *be* so.

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To understand the magnitude of the effort involved in reviewing these documents for declassification, it is important to place them in some context. The CIA's collection of documents related to the assassination of President Kennedy consist of approximately 250,000-300,000 pages of material. This includes 64 boxes of (copies ~~of~~ and originals of) information provided to the (Warren Commission and the) House Select Committee on Assassinations ~~between 1977 and 1979~~, and ~~over~~ 17 boxes of material on Lee Harvey Oswald, accumulated after President Kennedy's assassination.

~~At first blush, you might think that this is an enormous amount of material for the CIA to have on the assassination. It is important to recognize, however, that~~ Virtually all of these are ~~essentially "secondary"~~ documents ~~collected~~ were ~~accumulated~~ originated or came to CIA from other agencies after the assassination as a result of specific inquiries received from the Warren Commission or the House Select Committee on Assassinations. ~~There were~~ some documents ~~that did~~ relevant to the investigations existed before the assassination, but they were only brought together in response to investigations of the event. I have prepared a chart that illustrates this very point.

As you can see, prior to President Kennedy's assassination CIA held only a small file on Lee Harvey Oswald that consisted of ~~37~~ 33 documents (~~less than 150~~ approximately 160 pages), ~~of which 28 documents consisted of material originated by the State Department, the Navy, the FBI, and newspaper clippings.~~ I have brought along a copy of Oswald's file as it existed before the assassination so that you can see first hand how slender it was at the time. As I have

Handwritten margin notes: "add pt." "how + where? What kind of documents" "rewrite" "not clear" "What's this mean? Spell out" "Where's the chart?" "11 - CIA (need pages)" "The documents" "Only 11 of were CIA documents"

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What's that mean? Sounds like a dodge.

already noted, we have declassified the CIA documents in this file and provided them to the National Archives. The records in this file dealt with Oswald's defection to the Soviet Union in 1959 and his activities in the U.S. after his return in 1961. By contrast, it was only after the assassination that CIA collected all the rest of the material on Oswald--some 33,000 pages in total.

I should emphasize that much of the material held by CIA originated from other agencies or departments. For example, in the 17 boxes of Oswald records, approximately 40% percent of the documents originated with the FBI, and about 20% originated from the State Department or elsewhere. My staff is still going through the material compiled at the request of the House Select Committee on Assassinations, which includes 63 boxes of paper records and one box that contains 72 reels of microfilm. However, we estimate that within the 63 boxes of paper records, approximately 10 % originated from the FBI, and a smaller number of records, less than 1 %, originated from the State Department or elsewhere.

Although our holdings do include many documents from other agencies, we nonetheless have a substantial collection of CIA documents that will require a considerable effort to review. A preliminary review of these files has provided us some indications of what they contain. Although the records cover a wide variety of topics, they principally focus on CIA activities concerning Cuba and Castro, Oswald's defection to the Soviet

Union, and Oswald's subsequent activities in Mexico City and New Orleans. They also include a large number of name traces requested by the staff of the House Select Committee on Assassinations, as well as material relating to the Garrison investigation, and Cuban exile activities. ~~copies of FBI reports about Oswald, and even information about Watergate.~~

The CIA cannot ~~simply act to declassify or~~ release ~~some~~ a number of documents unilaterally because of the limits in the Privacy Act (which protects the names of American citizens against unauthorized disclosure), the sequestration of many documents by the House Select Committee on Assassinations, and the fact that many of the documents belong to agencies other than the CIA. However, we have already taken the necessary steps to lift the sequestration, coordinate with other agencies and begin the process of declassification. If necessary, I will ask the House for a resolution permitting CIA to ~~proceed to review for declassification~~ these documents it has sequestered.

(Margin, right: The House will let us declassify and release these sequestered documents?)

(Margin, left: Release the results of the declassification on the sequestered documents?)

~~While I expect a large amount of material can be~~ declassified under our program, there still will be information that cannot be released to the public for a variety of reasons, including privacy concerns or the exposure of intelligence sources and methods. Let me take a moment to give examples of this type of material. During the investigation by the House Select Committee on Assassinations, I understand that security and personnel files were requested ~~on~~ a number of Agency employees. These files contain fitness reports (performance evaluations), medical evaluations and credit checks on individual CIA officers.

Although largely irrelevant to the question of who killed President Kennedy, these and other personal documents ultimately ended up in the sequestered collection of documents. I do not believe that the benefit to the public of disclosure of this information outweighs the clear privacy interest of the individuals in keeping this information confidential. Similar privacy concerns exist with documents containing derogatory information on particular individuals where the information is based on gossip or rumor. Our files also contain names of living individuals who provided us intelligence information on a promise of confidentiality. We would not disclose ~~this information~~ in breach of such a promise. Where we cannot disclose such information to the public, the Agency will ~~be willing~~ to make redactions, ~~substitute generic information~~ or summarize ~~the~~ information in order to ensure that the maximum amount of information is released while still protecting the identity of an agent or the privacy of an individual.

The effort required to declassify the documents related to the assassination of President Kennedy will be daunting. However, it is an important program, and I am personally committed to making it work. Even in this time of diminishing resources within the Intelligence Community, I have directed the allocation of ~~15~~ full-time positions to expand the History Staff, and to form the Historical Review Group that will undertake the review the JFK documents and other documents of historical interest.

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intent to get these papers declassified and released, and to what remains classified to outside, non-governmental review. It is against this background that, in response to this Committee's request, I cite our

While we are in complete agreement on the need to declassify documents related to the assassination of President Kennedy, I do have certain technical reservations about the mechanism established by the joint resolution to achieve this same result. I intend to address only Intelligence Community concerns; I will defer to the Department of Justice on any additional problems posed by the joint resolution.

My primary concern with the joint resolution, as currently drafted, is that it directs the Executive Director of the Assassination Materials Review Board to make the initial the determination as to whether materials related to the assassination held by all Executive Branch agencies, including CIA, can be released to the public. Vesting this review authority in an outside body is inconsistent with my statutory responsibility to protect intelligence sources and methods. In addition, I am concerned that placing responsibility for classification determinations in a Review Board that has no particular expertise in making intelligence classification determinations and is unfamiliar with the assassination material is bound to result in delays in releasing the material. It will also result in a duplication of effort since originating agencies will have to review the decision of the Executive Director to release particular documents.

I share your belief that the review of documents be done in an expeditious and efficient manner. To that end, I propose that the initial review of assassination materials be made by the

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originating agencies and completed within a reasonable period of time. As I have indicated, the CIA has already begun this process. Documents that an agency determines cannot be released to the public (or redactions) would then be reviewed by members of the Review Board, who could operate with a lean staff. Any dispute between an agency and the Review Board over the release of a document could then be resolved by the President or his designee. This arrangement would ensure that the initial review of documents is accomplished quickly by individuals who are in place and have the necessary substantive experience to declassify documents while at the same time providing an independent review of all decisions made to withhold information. It presumably would expedite the process because the amount of material still classified to be reviewed would be only a fraction of the whole.

Second, I am concerned that the joint resolution contains no provision requiring security clearances or secure document handling by the Assassination Materials Review Board or its staff. [As Director of Central Intelligence, I have an obligation to protect intelligence sources and methods, and to uphold that obligation I could not make classified information available to the Board until it took the necessary steps to safeguard that information.]

Third, I am concerned that the joint resolution does not provide the Agency with the opportunity to object to the release of CIA information contained in documents originated by Congress or the Warren Commission. Under the joint resolution, documents originated by these entities can be released directly by the Executive Director of the Assassination Materials Review

Board without any review by the President or other Executive Branch agencies. Once again, this provision conflicts with my statutory responsibility to protect sources and methods; that duty should not be delegated to an outside body. I believe that the joint resolution should provide that an agency that originated <u>information</u> found in another's document should have the opportunity to review the information and raise necessary objections prior to its release to the public. An interagency working group should be established to coordinate the review and release of this "third agency" information in a timely fashion.

Fourth, the joint resolution defines "assassination material" broadly to include any records that relate "in any manner or degree to the assassination." I believe we have already identified these documents as a result of previous inquiries from investigative bodies, such as the Warren Commission and House Select Committee on Assassinations. These investigations were thorough, and any additional requests for information should bear some reasonable relationship to the JFK assassination. Perhaps a panel of distinguished historians could be formed to provide advice to the Review Board as to what, if any, additional material should be reviewed.

Fourth ~~Fifth~~, the joint resolution provision for ~~provides only~~ a 30-day period for agencies or departments to appeal decisions by the Executive Director to release information~~. This~~ may not provide sufficient time for meaningful review of what could prove to be large

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volumes of material at one time. If the initial review of documents is done by the Executive Director, the joint resolution should be amended to provide that an agency may request a reasonable extension of time to determine whether documents may be released.

Fifth and Finally, section 6 of the joint resolution, which outlines the grounds for postponement of public release of a document, ~~may not be adequate to protect Agency interests in certain respects. For example, there is~~ makes no provision for postponing release of documents that may contain Executive privilege or deliberative process, attorney-client, or attorney work-product information. While such privileges could be waived in the public interest and are not likely to arise with respect to factual information directly related to the JFK assassination, they would be unavailable under the joint resolution in the rare case that they might be needed. I also believe that "intelligence agent" under section 6(1)(A) of the joint resolution should be defined to include covert employees of an intelligence agency, or former employees who retired undercover from an intelligence agency.

While I believe that the joint resolution can be improved, I want you to know, Mr. Chairman, that the CIA will cooperate with whatever reasonable mechanism is established to declassify the assassination material. As Director of Central Intelligence and as ~~Robert Gates~~ a private citizen, I am committed to making this process work. It is my hope that the declassification of this

* These are technical problems that I believe can be solved in ways that will, in fact, expedite the release of documents bearing on the assassination of President Kennedy. But, again, whatever the future course of the legislation, CIA is proceeding even now to review for declassification the relevant documents under its control. We will cooperate further with any mechanism established by the Congress and the

6 May 1992

1) A number of questions? 2) Check my file with Gries, McDonald, OGC & OCA 3) Go ahead & circulate to OMB, DOJ & FBI.

NOTE FOR: DCI

FROM: Neal Wolin, SA/DCI

Re: JFK Testimony

Attached is the draft JFK testimony, as prepared by OCA. The draft has been coordinated with OGC, the Center for the Study of Intelligence (both Dave Gries and Ken McDonald), and the DO. The handwritten edits are mine and Dave Gries'. A briefing book with Q's and A's will be ready by COB Friday. As Stan's cover note suggests, the testimony must be coordinated with others in the Executive; OCA's preference is to send it out tomorrow.

Dave and I agree that the section of the draft testimony commenting on the proposed legislation (pp. 7 et seq.) is too long and runs the risk of overwhelming the positive message you relay in the first part of the statement. It seems to me that while you should lay down your objections to the legislation's scheme clearly (and even forcefully), you should do so in language that will leave the impression (which is consistent with the reality) that (1) you are in agreement with their basic objectives relating to the material in question and (2) that you are doing, and will continue to do, all that you can to accommodate the release of material consistent with your statutory obligations.

In particular I think it unnecessary to reiterate your "statutory responsibility to protect sources and methods" more than a couple of times. Moreover, I think the paragraph on the definition of "assassination material" (middle of p.9) unnecessary and potentially counterproductive. One of the impetuses for the JFK resolution, after all, is the notion (crazy or not) that previous inquiries were insufficient in scope; this paragraph feeds right into that criticism. Some of the other "technical" criticisms (i.e., paragraphs on pp. 9-10) seem important to make (especially if the basic model of the legislation is adopted) but might be better included in a post-hearing letter to the committee or something. Again, otherwise I fear you run the risk of leaving the perception of trying to nitpick the concept of JFK material declassification to death.

Neal

Neal

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OCA 2149-92
19 May 1992

MEMORANDUM FOR: Director, Center for the Study of Intelligence
Chief, Administrative Law Division, OGC

FROM: David M. Pearline
Deputy Director for Legislation, OCA

SUBJECT: Follow-up to DCI's 15 May JFK Testimony

1. We have reviewed a transcript of the Director's 15 May testimony on the JFK Assassination Materials Resolution to identify those questions with respect to which CIA committed to provide answers for the record. A copy of the transcript with relevant portions marked is attached.

2. The following specific questions require follow-up action:

a. How much material has been destroyed by CIA that we may never know about? (p. 5)
b. Why was the Oswald file opened at the CIA 14 months after his defection? (p. 5)
c. Was Oswald in fact a Soviet spy? (p. 5)
d. Was that picture in his [Oswald's] file that was thought to be him, was that an error? Or was there something involved in that you can shed some light on? (p. 5)
e. [W]hat consisted of new information [in the Oswald file] that the public had not already had in its published files somewhere? (p. 14)
f. [W]ould the establishment of such a panel of outside experts [by DCI, to review redactions in the absence of legislation] . . .violate the Privacy Act? (p. 16)

3. I assume CSI, in coordination with appropriate components, will take the lead on all questions except for the last. I understand OGC will take the lead on the Privacy Act question. (Note: OGC advises that the issue of why Oswald's file was not opened for 14 months after his defection is addressed in the Findings and Recommendations volume of the HSCA Report at pp. 200-202.) I appreciate your assistance in preparing proposed responses for the record.

David M. Pearline

Attachment

Draft: 14 May 1992

STATEMENT OF ROBERT M. GATES

DIRECTOR OF CENTRAL INTELLIGENCE

BEFORE THE

SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY

COMMITTEE ON GOVERNMENT OPERATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

15 MAY 1992

Mr. Chairman, I am here today at your request to provide my views on **House Joint Resolution 454,** "The Assassination Materials Disclosure Act of 1992," and to describe the nature of documents held by the CIA that relate to the assassination of John F. Kennedy. I very much appreciate the opportunity to speak on this important matter, **just as I did before your Senate counterparts last Tuesday.**

Let me begin by stating that I am in complete agreement with the purpose underlying the joint resolution--that efforts should be made to declassify and make available to the public as quickly as possible government documents relating to the assassination of John F. Kennedy. We hope that opening up and giving journalists, historians and, most importantly, the public access to governmental files will help to resolve questions that still linger over 28 years after the assassination. Further, I believe that maximum disclosure will discredit the theory that CIA had anything to do with the murder of President Kennedy.

Even before introduction of this joint resolution, I recognized the need for greater public access to CIA documents of historical importance. Two months ago, I announced the establishment of a new unit within CIA that will be responsible for declassifying as many historical documents as possible

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consistent with the protection of intelligence sources and methods. This new unit, the Historical Review Group, in the Agency's Center for the Study of Intelligence, will review for declassification documents 30 years old or older, and national intelligence estimates on the former Soviet Union that are 10 years old or older. In addition to the systematic review of 30-year-old documents, I have directed the History Staff in the Center for the Study of Intelligence to assemble CIA records focusing on particular events of historical importance, including the assassination of President Kennedy. The Historical Review Group will then examine the documents for the purpose of declassifying the records.

Because of high interest in the JFK papers, I am not waiting for legislation or other agencies to start declassifying documents belonging to CIA. The Historical Review Group, at my direction, already has begun its review of the documents related to the assassination of President Kennedy, and I am happy to report that the first group of these records, including all CIA documents on Lee Harvey Oswald prior to the assassination, has been declassified with quite minimal deletions and transferred to the National Archives for release to the public. This is, I acknowledge, a small fraction of what we have, but it is an earnest of my commitment immediately to begin review for declassification of this material. And, indeed, as I speak, the reviewers are going through a substantial number of documents, and I anticipate that many of these will be released shortly.

As we carry out our program to declassify Kennedy assassination documents, our goal will be to release as many as possible. In fact, I recently approved new CIA declassification guidelines for our Historical Review Program which specifically direct a presumption in favor of declassification. I believe we can be very forward leaning in making these documents available to the public, and I have instructed the Historical Review Group to take this attitude to heart. **In this spirit, the Agency is making publicly available these new guidelines for historical review and declassification.**

In connection with these historical review guidelines, I have recently commissioned a task force to review Agency procedures under the Freedom of Information Act (FOIA). I have instructed this task force to ensure that our internal FOIA procedures are consistent with the approach that I have described for historical declassification. Although the task force will have to explore the difference between current documents that often are requested under FOIA and 30-year-old documents that are placed into the historical review program, my intention is to bring to the FOIA process a much more positive attitude toward declassification and release of Agency records.

To understand the magnitude of the effort involved in reviewing the **JFK papers** for declassification, it is important to

place them in some context. CIA's collection of documents related to the assassination of President Kennedy consists of approximately 250,000-300,000 pages of material. This includes 64 boxes of copies and originals of information provided to the Warren Commission and the House Select Committee on Assassinations and 17 boxes of material on Lee Harvey Oswald accumulated after President Kennedy's assassination. Unfortunately, and for reasons that I do not know, what we are dealing with is a mass of material that is not indexed, is uncatalogued, and is highly disorganized--all of which makes the review process more difficult. The material contains everything from the most sensitive intelligence sources to the most mundane news clippings.

Chart

These records include documents that CIA had in its files before the assassination, a large number of records that CIA received later as routine disseminations from other agencies, as well as the reports, correspondence, and other papers that CIA prepared in the course of the assassination investigations. I should emphasize that these records were assembled into the present collection as a result of specific inquiries received from the Warren Commission or the House Select Committee on Assassinations. I have prepared a chart that illustrates this point.

As you can see, prior to President Kennedy's assassination CIA held only a small file on Lee Harvey Oswald that consisted of 34 documents (**amounting to 124** pages), some of which

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originated with the FBI, State Department, the Navy, and newspaper clippings. **(Although I reported slightly smaller numbers to the Senate Committee on Governmental Affairs earlier this week, a subsequent count by my staff revealed these exact numbers.)** Only 11 of these documents originated within CIA. I brought along a copy of Oswald's file as it existed before the assassination so that you can see first-hand how slender it was at the time. As I have already noted, we have declassified the CIA documents in this file with quite minimal deletions and **provided** them to the National Archives. The records in this file dealt with Oswald's defection to the Soviet Union in 1959 and his activities after his return in 1962. By contrast, it was only after the assassination that CIA accumulated the rest of the material on Oswald--some 33,000 pages--most of which CIA received from other agencies after November 22, 1963.

There has been some comment on this pre-assassination Oswald file and how little it contained. I want to reemphasize that this is but the first installment--an example of our intentions. All of the assassination-related documents we have will be reviewed for declassification, and we will transfer the declassified documents to the Archives as they are completed, rather than waiting until work on the entirety has been concluded.

The committee has asked about documents in our possession generated by other agencies. In fact, much of the material held by

CIA originated with other agencies or departments. For example, in the 17 boxes of Oswald records, approximately 40% of the documents originated with the FBI, and about 20% originated with the State Department or elsewhere. Our staff is still going through the material compiled at the request of the Warren Commission and the House Select Committee on Assassinations, which includes 63 boxes of paper records and one box that contains 73 reels of microfilm. The microfilms in part overlap material in other parts of the collection. We estimate that within the 63 boxes of paper records, approximately 27% originated with a variety of other U.S. government agencies, private organizations, and foreign and American press.

Mr. Chairman, you have also asked about assassination materials that may be held by other Intelligence Community agencies. The FBI will describe its holdings separately, which I assume include both intelligence and law enforcement records. The National Security Agency and the State Department's Bureau of Intelligence and Research report, after a preliminary search, that they have identified a relatively small amount of material responsive to previous inquiries by the Warren Commission, the Church Committee, and the House Select Committee on Assassinations. The Defense Intelligence Agency, which did not come into existence until 1961, has identified no assassination material to date, and it anticipates that any holdings it might have would be

minimal because its mission at the time of the Kennedy assassination focused upon foreign order of battle.

Although our holdings at CIA do include many documents from other agencies, we nonetheless have a substantial collection of CIA documents that will require a considerable effort to review, and, as I said earlier, at my direction, this review for declassification is now underway. A preliminary survey of these files has provided us some indications of what they contain. Although the records cover a wide variety of topics, they principally focus on CIA activities concerning Cuba and Castro, Oswald's defection to the Soviet Union, and Oswald's subsequent activities in Mexico City and New Orleans. They also include a large number of name traces requested by the staff of the House Select Committee on Assassinations, as well as material relating to the Garrison investigation and Cuban exile activities.

CIA cannot release a number of documents unilaterally because of the limits in the Privacy Act (which protects the names of American citizens against unauthorized disclosure), the sequestration of many documents by the House Select Committee on Assassinations, and the fact that many of the documents belong to agencies other than CIA. However, we have already taken steps to lift the sequestration, to coordinate with other agencies, and to begin the process of declassification. If necessary, in the absence of legislation, I will ask the House of

Representatives for a resolution permitting CIA to release the results of the declassification effort on the sequestered documents.

While I expect a large amount of material can be declassified under our program, I assume that there still will be information that cannot be released to the public for a variety of reasons, including privacy concerns or the exposure of intelligence sources and methods. Let me take a moment to give examples of this type of material. During the investigation by the House Select Committee on Assassinations, I understand that security and personnel files were requested on a number of Agency employees. These files contain fitness reports (or performance evaluations), medical evaluations and credit checks on individual CIA officers. Although irrelevant to the question of who killed President Kennedy, these and other personal documents ultimately ended up in the sequestered collection of documents. I do not believe that the benefit to the public of disclosure of this information outweighs the clear privacy interest of the individuals in keeping this information confidential. Similar privacy concerns exist with documents containing derogatory information on particular individuals where the information is based on gossip or rumor. Our files also contain names of individuals who provided us intelligence information on a promise of confidentiality. We would not disclose their names in breach of such a promise. Where we cannot disclose such information to the public, the Agency will make redactions and summarize the information in order to ensure that the maximum

amount of information is released while still protecting the identity of an agent or the privacy of an individual.

If legislation is not passed by Congress and signed by the President regarding the JFK papers, to enhance public confidence and to provide reassurance that CIA has not held back any information relevant to the assassination, I would appoint a panel of distinguished Americans from outside of government, perhaps including distinguished former jurists, to examine whatever documents we have redacted or kept classified. They would then issue an unclassified public report on their findings.

The effort required to declassify the documents related to the assassination of President Kennedy will be daunting. However, it is an important program, and I am personally committed to making it work. Even in this time of diminishing resources within the Intelligence Community, I have directed the allocation of 15 full-time positions to expand the History Staff and to form the Historical Review Group that will review the JFK documents and other documents of historical interest.

I believe these actions attest to the seriousness of our intent to get these papers declassified and released, and to open what remains classified to outside, non-governmental review. It is against this background that, in response to the committee's request, I cite our few technical reservations about the mechanism established by the joint resolution to achieve this same result. I

intend to address only Intelligence Community concerns; I will defer to the Department of Justice on any additional problems posed by the joint resolution.

First, vesting in an outside body the determination as to whether CIA materials related to the assassination can be released to the public is inconsistent with my own statutory responsibility to protect intelligence sources and methods.

Second, I am concerned that the joint resolution contains no provision requiring security clearances or secure document handling by the Assassination Materials Review Board or its staff.

Third, I am concerned that the joint resolution does not provide the Agency with the opportunity to object to the release of CIA information contained in documents originated by Congress or the Warren Commission. Under the joint resolution, documents originated by these entities can be released directly by the Executive Director of the Assassination Materials Review Board without any review by the President or other Executive Branch agencies.

Fourth, the joint resolution provision for a 30-day period for agencies or departments to appeal decisions by the Executive Director to release information may not provide sufficient time for meaningful review of what could prove to be a large volume of material at one time.

Fifth and finally, section 6 of the joint resolution, which outlines the grounds for postponement of public release of a document, makes no provision for postponing release of documents that may contain Executive privilege or deliberative process, attorney-client, or attorney work-product information. While such privileges could be waived in the public interest and, in fact, are not likely to arise with respect to factual information directly related to the JFK assassination, they would be unavailable under the joint resolution in the rare case that they might be needed.

These are technical problems that I believe can be solved in ways that will, in fact, expedite the release of documents bearing on the assassination of President Kennedy.

But, again, whatever the future course of this legislation, CIA is proceeding even now to review for declassification the relevant documents under its control. Further, we will cooperate fully with any mechanism established by the Congress and the President to declassify all of this material.

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Statement of Admiral William O. Studeman, USN
Deputy Director of Central Intelligence

Before the Subcommittee on Economic and Commercial Law
Committee on the Judiciary
U.S. House of Representatives
20 May 1992

Mr. Chairman, I am here today at your request to provide our views on House Joint Resolution 454, "The Assassination Materials Disclosure Act of 1992," and to describe the nature of documents held by the CIA that relate to the assassination of John F. Kennedy. I very much appreciate the opportunity to speak on this important matter.

Let me begin, as the Director did last week in testifying on this subject, by emphasizing that I am in complete agreement with the purpose underlying the joint resolution--that efforts should be made to declassify and make available to the public as quickly as possible government documents relating to the assassination of John F. Kennedy. We hope that opening up and giving journalists, historians and, most importantly, the public access to governmental files will help to resolve questions that still linger over 28 years after the assassination. Further, we believe that maximum disclosure will discredit the theory that CIA had anything to do with the murder of President Kennedy.

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Even before introduction of this joint resolution, the Director recognized the need for greater public access ~~to~~ CIA documents of historical importance. Two months ago, he announced the establishment of a new unit within CIA that will be responsible for declassifying as many historical documents as possible consistent with the protection of intelligence sources and methods. This new unit, the Historical Review Group, in the Agency's ~~Center for the Study of Intelligence, will review for~~ declassification documents ~~30 years old or older, and national~~ intelligence estimates on the former Soviet Union that are 10 years old or older. In addition to the systematic review of 30-year-old documents, the Director has directed the History Staff in the Center for the Study of Intelligence to assemble CIA records focusing on particular events of historical importance, including the assassination of President Kennedy. The Historical Review Group will then examine the documents for the purpose of declassifying the records.

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but it is an indication of our commitment immediately to begin review for declassification of this material. And, indeed, as I speak, the reviewers are going through a substantial number of documents, and we anticipate that many of these will be released shortly.

As we carry out our program to declassify Kennedy assassination documents, our goal will be to release as many as possible. In fact, the Director recently approved new CIA declassification guidelines for our Historical Review Program which specifically direct a presumption in favor of declassification. The Director believes that we can be very forward leaning in making these documents available to the public, and he has instructed the Historical Review Group to take this attitude to heart. In this spirit, the Agency is making publicly available these new guidelines for historical review and declassification.

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FOIA process a much more positive attitude toward declassification and release of Agency records.

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There has been some comment on this pre-assassination Oswald file and how little it contained. I want to reemphasize that this pre-assassination material is but the first installment of all the material that we will review--an example of our intentions. All of the assassination-related documents we have will be reviewed for declassification, and we will transfer the declassified documents to the Archives as they are completed, rather than waiting until work on the entirety has been concluded.

We have been asked about documents in our possession generated by other agencies. In fact, much of the material held by CIA originated with other agencies or departments. For example,

in the 17 boxes of Oswald records, approximately 40% of the documents originated with the FBI, and about 20% originated with the State Department or elsewhere. Our staff is still going through the material compiled at the request of the Warren Commission and the House Select Committee on Assassinations, which includes 63 boxes of paper records and one box that contains 73 reels of microfilm. The microfilms in part overlap material in other parts of the collection. We estimate that within the 63 boxes of paper records, approximately 27% originated with a variety of other U.S. government agencies, private organizations, and foreign and American press.

We have also been asked about assassination materials that may be held by other Intelligence Community agencies. The FBI will describe its holdings separately, which I assume include both intelligence and law enforcement records. The National Security Agency and the State Department's Bureau of Intelligence and Research report, after a preliminary search, that they have identified a relatively small amount of material responsive to previous inquiries by the Warren Commission, the Church Committee, and the House Select Committee on Assassinations. The Defense Intelligence Agency, which did not come into existence until 1961, has identified no assassination material to date, and it anticipates that any holdings it might have would be minimal because its mission at the time of the Kennedy assassination focused upon foreign order of battle.

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Although our holdings at CIA do include many documents from other agencies, we nonetheless have a substantial collection of CIA documents that will require a considerable effort to review, and, as I said earlier, this review for declassification is now underway. A preliminary survey of these files has provided us some indications of what they contain. Although the records cover a wide variety of topics, they principally focus on CIA activities concerning Cuba and Castro, Oswald's defection to the Soviet Union, and Oswald's subsequent activities in Mexico City and New Orleans. They also include a large number of name traces requested by the staff of the House Select Committee on Assassinations, as well as material relating to the Garrison investigation and Cuban exile activities.

CIA cannot release a number of documents unilaterally because of the limits in the Privacy Act (which protects the names of American citizens against unauthorized disclosure), the sequestration of many documents by the House Select Committee on Assassinations, and the fact that many of the documents belong to agencies other than CIA. However, we have already taken steps to lift the sequestration, to coordinate with other agencies, and to begin the process of declassification. If necessary, in the absence of legislation, we will ask the House of Representatives for a resolution permitting CIA to release the results of the declassification effort on the sequestered documents. We hope to work with you, Mr. Chairman, to remove any obstacles that might arise in releasing the sequestered documents.

While we expect that a large amount of material can be declassified under our program, I assume that there still will be information that cannot be released to the public for a variety of reasons, including privacy concerns or the exposure of intelligence sources and methods. Let me take a moment to give examples of this type of material. During the investigation by the House Select Committee on Assassinations, I understand that security and personnel files were requested on a number of Agency employees. These files contain fitness reports (or performance evaluations), medical evaluations and credit checks on individual CIA officers. Although irrelevant to the question of who killed President Kennedy, these and other personal documents ultimately ended up in the sequestered collection of documents. I do not believe that the benefit to the public of disclosure of this information outweighs the clear privacy interest of the individuals in keeping this information confidential. Similar privacy concerns exist with documents containing derogatory information on particular individuals where the information is based on gossip or rumor. Our files also contain names of individuals who provided us intelligence information on a promise of confidentiality. We would not disclose their names in breach of such a promise. Where we cannot disclose such information to the public, the Agency will make redactions and summarize the information in order to ensure that the maximum amount of information is released while still protecting the identity of an agent or the privacy of an individual.

If legislation is not passed by Congress and signed by the President regarding the JFK papers, to enhance public confidence and to provide reassurance that CIA has not held back any information relevant to the assassination, the Director has stated that he would appoint a panel of distinguished Americans from outside of government, perhaps including distinguished former jurists, to examine whatever documents we have redacted or kept classified. They would then issue an unclassified public report on their findings.

The effort required to declassify the documents related to the assassination of President Kennedy will be daunting. However, it is an important program, and both the Director and I are personally committed to making it work. Even in this time of diminishing resources within the Intelligence Community, the Director has allocated 15 full-time positions to expand the History Staff and to form the Historical Review Group that will review the JFK documents and other documents of historical interest.

I believe these actions attest to the seriousness of our intent to get these papers declassified and released, and to open what remains classified to outside, non-governmental review. It is against this background that, in response to the committee's request, I cite our few technical reservations about the mechanism established by the joint resolution to achieve this same result. I intend to address only Intelligence Community concerns; I will

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defer to the Department of Justice on any additional problems posed by the joint resolution.

First, vesting in an outside body the determination as to whether CIA materials related to the assassination can be released to the public is inconsistent with the Director's statutory responsibility to protect intelligence sources and methods.

Second, we are concerned that the joint resolution contains no provision requiring security clearances or secure document handling by the Assassination Materials Review Board or its staff.

Third, we are concerned that the joint resolution does not provide the Agency with the opportunity to object to the release of CIA information contained in documents originated by Congress or the Warren Commission. Under the joint resolution, documents originated by these entities can be released directly by the Executive Director of the Assassination Materials Review Board without any review by the President or other Executive Branch agencies.

Fourth, the joint resolution provision for a 30-day period for agencies or departments to appeal decisions by the Executive Director to release information may not provide sufficient time for meaningful review of what could prove to be a large volume of material at one time.

Fifth and finally, section 6 of the joint resolution, which outlines the grounds for postponement of public release of a document, makes no provision for postponing release of documents that may contain Executive privilege or deliberative process, attorney-client, or attorney work-product information. While such privileges could be waived in the public interest and, in fact, are not likely to arise with respect to factual information directly related to the JFK assassination, they would be unavailable under the joint resolution in the rare case that they might be needed.

These are technical problems that we believe can be solved in ways that will, in fact, expedite the release of documents bearing on the assassination of President Kennedy.

But, again, whatever the future course of this legislation, CIA is proceeding even now to review for declassification the relevant documents under its control. Further, we will cooperate fully with any mechanism established by the Congress and the President to declassify all of this material.

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Central Intelligence Agency

Washington, D.C. 20505

OCA 2157-92

22 May 1992

The Honorable John Glenn
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to correct for the record two statements I made when I testified before the Committee last Tuesday on the Assassination Materials Disclosure Act.

I testified that there were 33 documents, amounting to approximately 110 pages, in the Oswald file that was declassified and released to the public. A subsequent count by my staff revealed that the file actually contains a total of 34 documents, amounting to 124 pages. I gave the correct numbers when I testified last Friday before the Subcommittee on Legislation and National Security of the House Committee on Government Operations.

In addition, I was asked at your hearing by Senator Cohen whether the State Department or the CIA had had any contact with any Soviet officials concerning KGB or GRU files relevant to the Kennedy assassination. I answered that there had been no contact between the CIA and the Russian KGB on this matter, and I added that the State Department might have requested those files, but I was not certain. At the time, I believed that that was an accurate answer. I have since discovered, however, that in January 1992 an Agency official did ask the new Russian internal service (MBRF) for any information related to the Kennedy assassination. The Russians advised us, after reviewing their file holdings on Oswald, that they had nothing that would add to our knowledge or to the 22 November 1991 ABC television special on this issue, which they termed "detailed and objective."

CL BY 2196777
DECL OADR
DRV FM LIA 3-87

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SECRET

The Honorable John Glenn

To avoid disrupting our continuing efforts to gain access to the Russian files on Oswald, the fact that the Agency has had direct contacts with the Russian service on this topic must remain classified. For the purpose of correcting the public record, I suggest the following unclassified statement:

> In response to a request from the US embassy in Moscow, the Russians have reviewed their file holdings on Oswald. They have advised us that they had nothing that would add to our knowledge or to the 22 November 1991 ABC television special on this issue, which they termed "detailed and objective."

I enjoyed the opportunity to testify before the Committee, and I hope that these corrections prove helpful. A similar letter is being sent to Ranking Minority Member Roth.

Sincerely,

Robert M. Gates
Director of Central Intelligence

cc: Senator Cohen
Senator Boren
Senator Murkowski

SECRET

Central Intelligence Agency

Washington, D.C. 20505

OCA 2157-92/1
22 May 1992

The Honorable William V. Roth, Jr.
Ranking Minority Member
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Roth:

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CL BY 2196777
DECL OADR
DRV FM LIA 3-87

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SECRET

The Honorable William V. Roth, Jr.

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Sincerely,

Robert M. Gates
Director of Central Intelligence

cc: Senator Cohen
Senator Boren
Senator Murkowski

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SECRET

The Honorable John Glenn
The Honorable William V. Roth, Jr.

SUBJECT: Corrections on DCI Testimony before the Committee on Governmental Affairs

OCA/LEG/SMDunne:me/37916 (21 May 1992) OCA 2157-92

Distribution:
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Senator John Glenn

News Release

IMMEDIATE RELEASE: Contact: Jack Sparks (202) 224-5635
May 12, 1992 Leonard Weiss (202) 224-4751

Statement of Senator John Glenn
Chairman, Senate Governmental Affairs Committee
Hearing on
S. J. Res. 282, "The Assassination Materials Disclosure Act"
May 12, 1992

The bill before us today, S.J. Res. 282, is the "Assassination Materials Disclosure Act of 1992." The legislation was introduced by Senator David Boren and Senator Arlen Specter. An identical bill was introduced in the House of Representatives by our colleague, Representative Louis Stokes.

The legislation would require the government to release records to the American public which are "relevant to the assassination of President John F. Kennedy." The bill would establish an independent review board within 90 days of enactment, and this board would work as quickly as possible to release the records to the public through the National Archives and the Government Printing Office.

The bill creates a strong presumption on releasing documents. The onus will be on those who would withhold documents to prove to the Review Board and the American people why those documents must be shielded from public scrutiny.

It is also important to stress that the legislation does not authorize any official investigation of the assassination. Its only purpose is to create a process by which the American public may be given the most complete access to review relevant records, and make their own observations and assessments. The Committee's work and the hearing today is likewise limited to this purpose.

This bill is the result of a climate of suspicion and distrust that has grown over the years regarding the official explanation of the assassination of President Kennedy. It is a climate nurtured by many books, articles, television programs, and the recent movie "JFK." Disclosure of information is the only reliable way to maintain the public trust, and dispel distrust. Those of us who knew President Kennedy personally and remember where we were when we learned of President Kennedy's assassination must exercise our responsibility to the next generation of Americans, whose historical knowledge of the

assassination of President Kennedy will be significantly improved by the release of these records.

Ironically, it was President John F. Kennedy who first required scheduled declassification in the release of Executive Branch national security information. Declassification schedules remained in effect until President Reagan eliminated the requirement in 1981, and President Bush persists in this same practice. It is likely that more government documents related to the Kennedy assassination could have been released over the past 12 years if declassification was still a priority. It is also fair to say that the 1986 amendments to the Freedom of Information Act, including broad law enforcement exemptions, have narrowed the release of Kennedy assassination records by the FBI.

The public interest in the history of the assassination of President Kennedy has been insatiable. In one noted bibliography, a total of 5,134 books, articles, reports, films, or television programs were produced on the subject between the years 1963 and 1979. The Library of Congress has over 250 holdings on the subject. The FBI continues to receive reports, allegations, and requests for further investigation. Indeed, as Director Sessions may testify today, the FBI has recently located and interviewed two of the three "hobos" who were identified as witnesses of the shooting, as well as seven Dallas police officers who were not previously interviewed by government investigators.

The speculation about the assassination of President Kennedy may be more cruel than the truth itself. It is arguable whether the disclosure of new information will dampen the speculation, but I hope that the breadth of information made available will answer many questions and provide many history lessons.

I view the Committee's mandate as determining whether the process for review and release of the records is fair and appropriate; and that exemptions, when needed, must be kept to a minimum. The Department of Justice has told the Committee that it will recommend a presidential veto of the bill as written. I hope we can find a way to construct a process for release of assassination related records that will be efficient and effective, will gain the confidence of the public, and will address concerns of the Justice Department that are legitimate.

The authors of the bill are to be congratulated for working quickly to propose an independent and accountable mechanism to release records related to the assassination. However, we must carefully consider the parameters of the bill.

I believe that the major issues include:

First, how will agencies and others who hold records define the universe of "relevant" Kennedy assassination materials? It is important to be able to go beyond the frame of reference of previous inquiries of commissions and committees, but the question must be asked: Where will the search for documents end?

Second, the definition and search for "relevant assassination material" also raises important questions of human resources and costs to organize and make material available to the Review Board. How much will this cost?

Third, what is the best mechanism to govern the review and release of records in an independent, accountable, and credible manner. The tension between management and public confidence in the process cannot be overlooked. However, it may be important to simplify the process. The bill proposes a five-member Review Board, with an Executive Director and staff. Are we creating a Rube Goldberg machine, or are these layers necessary?

Fourth, we must ask why the bill, which acts in the name of openness in government, also exempts the Review Board from the Government in the Sunshine Act, the Freedom of Information Act, the Administrative Procedures Act, and judicial review?

Fifth, is the issue of standards for postponement of disclosure. I strongly believe that the government should practice disclosure of information as the rule, unless there are demonstrable reasons for protecting the information. It is important to emphasize that while hundreds of thousands of pages of material will be released, the bill contains national security and privacy exemptions, and withholds personnel and administrative records relating to past official inquiries.

I personally believe that the agencies and the Congress, which hold Kennedy assassination records should not wait for the passage of legislation, and the resolution of all issues in the bill, before releasing documents. It is my intention to move legislation through the Committee as quickly as possible, but regardless it will take time for whatever authority is created in statute to become assembled, establish procedures, and begin its work. We will hear today how ready key agencies and congressional officials are to release their records. If even some of the material can go out the door without further adjustments, then let's give the public access now. The review board or whatever authority is created will certainly have the opportunity to face the more difficult issues shortly thereafter.

Today we are fortunate to have several experts and authorities to discuss these issues. These include the authors of the legislation, as well as the Director of the Central Intelligence Agency and the Director of the Federal Bureau of

Investigation. We are grateful to have our other witnesses as well. Among them is attorney James Lesar, President of the Assassination Archives and Research Center. Mr. Lesar's work represents the track record on public access to Kennedy assassination material under the Freedom of Information Act. He will speak to the nature and limitations of current access arrangements. We also have two prominent twentieth century historians, Professor Ernest May of Harvard University and Professor Athan Theoharis from Marquette University. Each possess extensive experience regarding the federal records of the intelligence and federal law enforcement communities. We welcome all of you to the Committee.

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CIHRG #
If you have any oral comments, Vicki Pepper is the one to call.
Dave

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6/5/92

SUGGESTED AREAS TO BE ADDRESSED IN REPORT LANGUAGE
(IF NOT ADDRESSED IN THE TEXT OF THE RESOLUTION)

1. Initial Review of assassination materials. It should be made clear that section 5 of H.J.Res. 454, which requires that records not provided to the Archivist for public disclosure be made available to the Review Board within 60 days of enactment, is not intended to preclude agencies from conducting their own reviews and making as much information available as possible before the Review Board conducts its review of assassination materials. Suggested clarifying report language:

> The Committee notes that some agencies, such as the Central Intelligence Agency, have already begun to review and release assassination materials. Section 5(a)(2), which requires that all records of an official investigation for which an agency is custodian be made available to the Review Board within 60 days of enactment of the Joint Resolution, is not intended to preclude agencies from continuing any reviews that they have ongoing and transferring documents to the Archives for public release wherever possible. In, fact the Committee encourages such reviews to continue inasmuch as they can provide for more expeditious release of assassination materials to the public.

2. "Third agency rule" adhered to in review of documents. The legislation on its face does not necessarily provide that the agency or department that originated the information will have any input into a decision to disclose the record, or will even be apprised of such a decision after the fact. Suggested clarifying report language:

> The Committee understands that existing regulations within the Executive Branch require that classified information originated in one agency may not be disseminated outside another agency to which it has been made available without the consent of the originating agency. The Committee expects that agencies that are custodians of records will follow this practice before providing information to the Archivist under section 5(a)(1) for public release pursuant to section 4.
>
> Section 5(a)(2) requires agencies that are custodians of records of official investigations to make such records available to the Review Board. The Board will then make a determination of whether the material qualifies for postponement under the criteria set forth

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in Section 7 and shall inform the custodian of records and the originating body of the record of its determination. The Committee expects that the Review Board also will consult with the agency or department that originated the information in reaching its determination as to whether public disclosure of the material must be postponed to ensure that it is apprised of relevant sensitivities presented by that information. For example, the Review Board should consult with the relevant Executive Branch agency that provided information incorporated into a Congressional document before making a decision to release that document and shall inform the originating agency of a decision to release that information.

3. Identities of covert employees qualify for postponement. "Intelligence agent" is something of a term of art that, left undefined, might not be construed to protect information that would reveal the identity of covert employees of intelligence organizations. Suggested clarifying report language:

The term "intelligence agent" as used in section 7(a)(1)(A) is intended to permit postponement of release of information that would reveal the identity of a domestic or foreign intelligence or counterintelligence asset, collaborator, foreign liaison contact, or covert employee of a United States intelligence organization, where the identity of any of these currently requires protection.

4. Board access to "any record" of an Executive agency. In addition to adding language to section 10(1)(1) to clarify that requests for additional records must be made by the Review Board itself, report language should make clear that the Committee does not intend the Board's discretion in this regard to be unbounded. Suggested report language:

Section 10(1)(1) provides that the Review Board may request "any record" from an Executive agency. The Committee intends to give the Review Board wide latitude to determine what additional records may be held by agencies that are relevant to the assassination of President Kennedy. Rather than the Committee attempting to define what records should be requested, the Committee believes that this judgment is best left to the Board, which will develop expertise in assassination-related issues and documents as its work

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proceeds. However, the Committee does not intend to vest unfettered discretion in the Review Board to request any and all records of agencies without regard to their relationship to the assassination. The Committee expects that the Board will request only documents that may bear some reasonable relationship to the assassination, and that the Board will be guided by the principle that unreasonable risk of exposure of sensitive intelligence or law enforcement sources or methods is to be avoided.

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HPSCI BRIEFING - JFK DECLASSIFICATION 10 April 1996

1. Nature of the records--Oswald 201, Sequestered

   - Other records: Minutes of DCI morning meetings; working files

   - Third Agency documents: FBI, SSCI, Presidential libraries

2. Pages released (227,000)

   - Percentage of pages redacted; 70 %

3. Process of declassification

   - Former senior officers in HRG review

   - Coordination with OGC, DO (DO team detailed to HRG)

4. Standards for review in JFK Assassination Records Collection Act, 1992

   - Records related to the assassination or investigation into the assassination

   - Law provides grounds for postponement of disclosure of records

     -- "Clear and convincing evidence" must be presented to the Board

     E.g., Identity of agent currently requiring protection

       - Source or method currently utilized

       - Foreign government relationship currently requiring protection

5. Board has authority to release records unless it agrees there is "clear and convincing evidence" to support a postponement

   - Board then has to justify on the record each redaction with which it agrees

   - Once a determination is made, Board must publish it in Federal Register within 14 days

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- Options available: substitute language e.g., "Northern European station"

    - Also, summary of a record

- Board has access to every document in full

6. Issues raised by Board's decisions:

    - Problem: Board has difficulty in linking disclosure of information that is 30 years old with <u>damage</u> to current intelligence operations

    - Identification of stations e.g., Helsinki

    - Names of former Agency employees who retired under cover

        - Board guidelines: Protect person if retired under cover and now residing overseas, but not if in US

    - Liaison, joint operations in Mexico

    - Briefing of the Board by Dave Edger, Jeff Smith, Central Cover, DO desk officers, others

    - Problem of accumulative effect of releases--eroding cover, ability to conduct operations

7. Provision for appeal to the White House if we disagree with Board's determination

    - President has sole authority to require postponement of a record or information

        --President required to advise the Board within 30 days of the Board's determination

            -- This is published in the Federal Register

8. Current appeal (now resolved)

Barry + Linda

    - Issues: identification of Agency asset
      liaison relationship
      identification of station

    - Potential appeal: Tokyo station

9. Additional requests of Board to review other records e.g., history of Mexico City station, Intelligence Community Staff records

13-00000

~~ADMINISTRATIVE - INTERNAL USE ONLY~~ Barry's file

CSI 1997-552
10 December 1997

NOTE FOR: Director, Center for the Study of Intelligence
Deputy Director
Office of Congressional Affairs

FROM: John Pereira
Chief, Historical Review Group

SUBJECT: JFK/Possible Letter from Congressman Burton to EXDIR

Jeremy Gunn, Executive Director of the JFK Board, told HRG yesterday that Congressman Dan Burton may well write a letter to the EXDIR expressing concern about whether CIA will be able to meet the deadline for declassification of assassination-related records. Burton chairs the Government Reform and Oversight Committee which has cognizance over the JFK Board.

Gunn said that he briefed members of Burton's staff last week and told them he was concerned that the Agency may not have enough resources dedicated to JFK to finish the review of documents by 1 September 1998. Gunn showed the staffers the recent exchange of letters between the Board and the EXDIR on the same issue. According to the staffers, Burton has a strong personal interest in the release of the assassination records. The staffers gave Gunn the impression that Burton's strong interest will prompt him to write to the Agency.

During our discussion with Gunn, we reviewed with him the Agency's clear commitment to declassifying all assassination records. We also explained that we have shifted four additional contractors to the JFK project, and will shift more if necessary, even at the cost of slowing down or stopping other declassification efforts.

John Pereira

John Pereira

1 - Eileen
1 - Fai'd Wickham
12/10
1 circulated JFK

~~ADMINISTRATIVE - INTERNAL~~ USE ONLY

ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
TTY (202) 225-6852

December 16, 1997

CIA HAS NO OBJECTION TO
DECLASSIFICATION AND/OR
RELEASE OF CIA INFORMATION
IN THIS DOCUMENT

The Honorable George J. Tenet
Director of Central Intelligence
Central Intelligence Agency
Washington, D.C. 20505

Dear Director Tenet:

As Chairman of the Committee on Government Reform and Oversight, I have a great interest in ensuring that the Assassination Records Review Board, which is under the jurisdiction of the Committee, completes its work by its scheduled termination date of September 30, 1998. Earlier this year I introduced H.R. 1553, now Public Law 105-25, which extended the authorization of the Review Board for one additional year, until September 30, 1998. This one-year extension of authorization for the Review Board was included in President Clinton's fiscal year 1998 budget, and received bipartisan support in Congress.

During consideration of H.R. 1553, I stated my firm intention for this to be the final extension of authorization for the Review Board. Accordingly, I believe that it is of utmost importance that all federal agencies holding assassination records fully cooperate with the Review Board, in a timely manner, in order that documents may be processed and transferred to the National Archives, in compliance with the President John F. Kennedy Assassination Records Collection Act of 1992 (Public Law 102-526).

The Review Board has advised me that while it perceives that the Central Intelligence Agency (CIA) generally has been cooperative and helpful, the Board nevertheless believes that the CIA is not transferring records to the Board at a pace consistent with the need to complete the work on time. The Board similarly has advised that, unless it receives processed records in a more expeditious manner, it is prepared to use its legal powers to order a transfer of records to the Board which would then vote to open the records without benefit of a pre-review by the CIA. The Board has informed me that it does not wish to take this step, but that it is fully prepared to do so if necessary to complete its work by its September 30, 1998, termination date.

I urge you to take all appropriate steps to ensure that the CIA promptly fulfills its obligations under the law by expeditiously reviewing and transferring the relevant records to the Review Board.

Sincerely,

Dan Burton

Dan Burton
Chairman

DB:jts

13-00000

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

EXECUTIVE DIRECTOR

OCA 97-1969
8 January 1998

CIA SPECIAL COLLECTIONS
RELEASE IN FULL
2000

The Honorable Dan Burton
Chairman
Committee on Government Reform
and Oversight
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of December 16, 1997 in which you expressed interest in the status of Central Intelligence Agency's (CIA) processing of records related to President John F. Kennedy's assassination.

You referred to the Assassination Records Review Board's concern that CIA may not be processing records at a pace sufficient to complete the work on time. I want to assure you, as I did to the Review Board's Executive Director in the enclosed November 21, 1997 letter, that the Agency is committed to taking all necessary steps to meet the statutory deadline of September 30, 1998 for reviewing all of the Agency's assassination-related materials. As the Review Board has noted, we are cooperating fully with the Board and its staff in this effort.

We share the Review Board's goal of declassifying and releasing the relevant records to the fullest extent possible. As you are aware, it is important that there be a proper review of all the records so that still sensitive information that might warrant continued protection can be identified to the Board. For the past several years a team of experienced reviewers has been dedicated to the task of declassifying the assassination records. Recently we shifted several additional personnel to the team in order to accelerate the processing of documents and assure the prompt transfer to the Review Board and ultimately to the National Archives.

The Honorable Dan Burton

I understand the importance that the Congress and the President have placed on disclosing to the American people all available information about the assassination. To this end, we have released more than 200,000 pages of material and are working diligently to complete our review of the remaining records.

If you or your staff require any further information or would like a briefing on our declassification program, please have your staff contact Mr. Jim Meehan, Office of Congressional Affairs, at (703) 482-8796.

Sincerely,

David W. Carey

David W. Carey

Enclosure

13-00000

The Honorable Dan Burton

DCI/OCA/Liaison Grp/JPMeehan:dms/37976 (29 Dec 97 **INTERIM**)
OCA 97-1969 (FN:wdata/action/liaison/burton.doc)
Revised from INTERIM LTR (never sent) to FINAL LTR (6 Jan 97)

Distribution:
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1 - EXDIR/CIA **(Follow-up to SCI 97-536)**
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1 - DA/OIM
1 - DA/OIM/IRG
1 - DA/MS
1 - D/OCA
1 - AO/OCA
1 - OCA Records **(ACTION ITEM: A/97-05697)**
1 - JPMeehan Chrono

Mr. Chairman, I am here today at your request to provide my views on Senate Joint Resolution 282, "The Assassination Materials Disclosure Act of 1992," and to describe the nature of documents held by the CIA that relate to the assassination of John F. Kennedy. I very much appreciate the opportunity to speak on this important matter.

Let me begin by stating that I am in complete agreement with the purpose underlying the joint resolution--that efforts should be made to declassify and make available to the public as quickly as possible government documents relating to the assassination of John F. Kennedy. We hope that opening up and giving journalists, historians and, most importantly, the public access to governmental files will help to resolve questions that still linger over 28 years after the assassination. Further, I believe that maximum disclosure will discredit the theory that CIA had anything to do with the murder of John F. Kennedy.

Even before introduction of this joint resolution, I recognized the need for greater public access to CIA documents of historical importance. Two months ago, I announced the establishment of a new unit within CIA that will be responsible for declassifying as many historical documents as possible consistent with the protection of intelligence sources and

methods. This new unit, the Historical Review Group, in the Agency's Center for the Study of Intelligence, will review for declassification documents 30 years old or older, and national intelligence estimates on the former Soviet Union that are 10 years old or older. In addition to the systematic review of 30-year-old documents, I have directed the History Staff in the Center for the Study of Intelligence to assemble CIA records focusing on particular events of historical importance, including the assassination of President Kennedy. The Historical Review Group will then examine the documents for the purpose of declassifying the records.

Because of high interest in the JFK papers, I am not waiting for legislation or other agencies to start declassifying documents belonging to CIA. The Historical Review Group, at my direction, already has begun its review of the documents related to the assassination of President Kennedy, and I am glad to report that the first group of these records, including all CIA documents on Lee Harvey Oswald prior to the assassination, has been declassified with quite minimal deletions and is being transferred to the National Archives for release to the public. This is, I acknowledge, a small fraction of what we have, but it is an earnest of my commitment to begin review for declassification immediately of this material. And, indeed, as I speak, the reviewers are going through a substantial number of documents, and I anticipate that many of these will be released shortly.

As we carry out our program to declassify Kennedy assassination documents, our goal will be to release as many documents as possible. In fact, I recently approved new CIA declassification guidelines for our Historical Review Program which specifically direct a presumption in favor of declassification. I believe we can be very forward leaning in making these documents available to the public, and I have instructed the Historical Review Group to take this attitude to heart.

Make public today the guidelines

To understand the magnitude of the effort involved in reviewing these documents for declassification, it is important to place them in some context. The CIA's collection of documents related to the assassination of President Kennedy consists of approximately 250,000-300,000 pages of material. This includes 64 boxes of copies and originals of information provided to the Warren Commission and the House Select Committee on Assassinations and 17 boxes of material on Lee Harvey Oswald accumulated after President Kennedy's assassination. Unfortunately, and for reasons I do not know, what we are dealing with is a mass of material that is not indexed, is uncatalogued, and is highly disorganized--all of which makes the review process more difficult. The material contains everything from the most sensitive intelligence sources to the most mundane news clippings.

These records include documents that CIA had in its files before the assassination, a large number of records that CIA received later as routine disseminations from other agencies, as well as the reports, correspondence, and other papers that CIA prepared in the course of the assassination investigations. I should emphasize that these records were assembled into the present collection as a result of specific inquiries received from the Warren Commission or the House Select Committee on Assassinations. I have prepared a chart that illustrates this point.

As you can see, prior to President Kennedy's assassination CIA held only a small file on Lee Harvey Oswald that consisted of 33 documents (approximately 110 pages), some of which originated with the FBI, State Department, the Navy, and newspaper clippings. Only 11 documents originated with the CIA. I have brought along a copy of Oswald's file as it existed before the assassination so that you can see first-hand how slender it was at the time. As I have already noted, we have declassified the CIA documents in this file with quite minimal deletions, and we are providing them to the National Archives. The records in this file dealt with Oswald's defection to the Soviet Union in 1959 and his activities after his return in 1961. By contrast, it was only after the assassination that CIA accumulated the rest of the material on Oswald--some 33,000 pages--most of which CIA received from other agencies after November 22, 1963.

You have asked about documents in our possession generated by other agencies. In fact, much of the material held by CIA originated with other agencies or departments. For example, in the 17 boxes of Oswald records, approximately 40% of the documents originated with the FBI, and about 20% originated from the State Department or elsewhere. Our staff is still going through the material compiled at the request of the Warren Commission and the House Select Committee on Assassinations, which includes 63 boxes of paper records and one box that contains 72 reels of microfilm. The microfilms in part overlap material in other parts of the collection. We estimate that within the 63 boxes of paper records, approximately 27% of the documents originated with a variety of other U.S. government agencies, private organizations, and foreign and American press.

Although our holdings do include many documents from other agencies, we nonetheless have a substantial collection of CIA documents that will require a considerable effort to review and, as I said earlier, at my direction, this review for declassification is now underway. A preliminary survey of these files has provided us some indications of what they contain. Although the records cover a wide variety of topics, they principally focus on CIA activities concerning Cuba and Castro, Oswald's defection to the Soviet Union, and Oswald's subsequent activities in Mexico City and New Orleans. They also include a large number of name traces requested by the staff of the House

Select Committee on Assassinations, as well as material relating to the Garrison investigation and Cuban exile activities.

The CIA cannot release a number of documents unilaterally because of the limits in the Privacy Act (which protects the names of American citizens against unauthorized disclosure), the sequestration of many documents by the House Select Committee on Assassinations, and the fact that many of the documents belong to agencies other than the CIA. However, we have already taken the necessary steps to lift the sequestration, coordinate with other agencies and begin the process of declassification. If necessary, I will ask the House for a resolution permitting CIA to release the results of the declassification effort on the sequestered documents.

While I expect a large amount of material can be declassified under our program, I assume that there still will be information that cannot be released to the public for a variety of reasons, including privacy concerns or the exposure of intelligence sources and methods. Let me take a moment to give examples of this type of material. During the investigation by the House Select Committee on Assassinations, I understand that security and personnel files were requested on a number of Agency employees. These files contain fitness reports (performance evaluations), medical evaluations and credit checks on individual CIA officers. Although irrelevant to the question of who killed President Kennedy, these and other personal

documents ultimately ended up in the sequestered collection of documents. I do not believe that the benefit to the public of disclosure of this information outweighs the clear privacy interest of the individuals in keeping this information confidential. Similar privacy concerns exist with documents containing derogatory information on particular individuals where the information is based on gossip or rumor. Our files also contain names of individuals who provided us intelligence information on a promise of confidentiality. We would not disclose their names in breach of such a promise. Where we cannot disclose such information to the public, the Agency will make redactions and summarize the information in order to ensure that the maximum amount of information is released while still protecting the identity of an agent or the privacy of an individual.

If legislation is not passed by Congress and signed by the President regarding the JFK papers, to enhance public confidence and provide reassurance that CIA has not held back any information relevant to the assassination, I will appoint a panel of distinguished Americans from outside of government to examine whatever documents we have redacted or kept classified. They would then issue an unclassified public report on their findings.

perhaps including former distinguished jurists

The effort required to declassify the documents related to the assassination of President Kennedy will be daunting. However, it is an important program, and I am personally committed to making it work. Even in this time of diminishing

resources within the Intelligence Community, I have directed the allocation of 15 full-time positions to expand the History Staff and to form the Historical Review Group that will review the JFK documents and other documents of historical interest.

I believe these actions attest to the seriousness of our intent to get these papers declassified and released, and to open what remains classified to outside, non-governmental review. It is against this background that, in response to this Committee's request, I cite our technical reservations about the mechanism established by the joint resolution to achieve this same result. I intend to address only Intelligence Community concerns; I will defer to the Department of Justice on any additional problems posed by the joint resolution.

First, vesting in an outside body the determination as to whether CIA materials related to the assassination can be released to the public is inconsistent with my statutory responsibility to protect intelligence sources and methods.

Second, I am concerned that the joint resolution contains no provision requiring security clearances or secure document handling by the Assassination Materials Review Board or its staff.

Third, I am concerned that the joint resolution does not provide the Agency with the opportunity to object to the release of <u>CIA information</u> contained in <u>documents</u> originated by

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Congress or the Warren Commission. Under the joint resolution, documents originated by these entities can be released directly by the Executive Director of the Assassination Materials Review Board without any review by the President or other Executive Branch agencies.

Fourth, the joint resolution provision for a 30-day period for agencies or departments to appeal decisions by the Executive Director to release information may not provide sufficient time for meaningful review of what could prove to be a large volume of material at one time.

Fifth and finally, section 6 of the joint resolution, which outlines the grounds for postponement of public release of a document, makes no provision for postponing release of documents that may contain Executive privilege or deliberative process, attorney-client, or attorney work-product information. While such privileges could be waived in the public interest and are not likely to arise with respect to factual information directly related to the JFK assassination, they would be unavailable under the joint resolution in the rare case that they might be needed.

These are the technical problems that I believe can be solved in ways that will, in fact, expedite the release of documents bearing on the assassination of President Kennedy.

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But, again, whatever the future course of the legislation, CIA is proceeding even now to review for declassification the relevant documents under its control. Further, we will cooperate with any mechanism established by the Congress and the President to declassify all of this material.

Added comment on personal reaction at the time.
Determined personally to make available every scrap of paper

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CIA SPECIAL COLLECTIONS RELEASE IN FULL 2000

SECRET

4 May 1992

TABULATION OF PAGES IN THE OSWALD PRE-ASSASSINATION FILE:

NOT A PART

ADDED LATER

Pages	Date	Description
1	6 Mar 64	Note-slip on DECLASSIFIED version held in NARA
4	30 Jan 76	CIA transmittal sheet, with NARA's query of 15 Jan 75 on deleting #s.
1	6 Mar 64	DD/P transm sheet, re NARA's holding.
4	6 Mar 64	Helms Memo to Rankin, describing file contents.
5	6 Mar 64	Copy of above, with Helms note to Rankin.
1	31 Oct 59	State Cable from Moscow to SecState.
1	"	Redacted copy of same.
1	1 Nov 59	Press clipping
1	2 & 4 Nov	Notes on Oswald & Papich (FBI) query
3	2 Nov 59	Fon Sv Despatch, fr Moscow to Dept
1	9 Nov 59	State Cable, Moscow to SecState
1	"	Redacted copy of same
1	9 Nov 59	State Cable, Tokyo to SecState
1	"	Redacted copy of same
1	16 Nov 59	Press clipping
1	26 Nov 59	Press clipping
1	25 May 60	Cover Memo fr Dir Hoover, FBI, to Helms
7	12 May 60	Attachment to above
2	12 May 60	FBI report, fr Dallas
2	25 Oct 60	State (Cumming) to Helm, listing US defectors
2	"	Redacted copy of same
1	3 Nov 60	DD/P Bissell to State (Cumming)
1	"	Redacted copy of same
1	18 Nov 60	Cover Memo (internal) to DD/P, to accompany draft reply to Cumming
1	undated	Handwritten descrip of letter cited above
2	21 Nov 60	Cover letter, Bissell to Cumming, on US defectors
1	"	Declassified version of Oswald info from ff
7	"	List of US defectors attached to Bissell letter
1	18 Nov 60	Memo fr Horton, acting C/CIS, to Bissell
9	21 Nov 60	Second copy of Bissell letter and list, above
2	9 Dec 60	2 copies of redacted request to set up Oswald 201
3	11 Jul 61	Fon Sv Despatch, Moscow to Dept
4	26 May 61	2 copies of Fon Sv Despatch, Moscow to Dept
1	13 Apr 61	DeptState Instruction on Oswald citizenship and passport (signed Rusk)
1	26 Jan 61	State MemCon re Oswald
1	"	Redacted copy of same
14	13 Jul 61	Cover letter to Helms fr Hoover, plus several FBI reports, much of which is illegible
1	28 Sep 61	Short bio of Marina (redacted), for inclusion in Oswald 201
4	13 Oct 61	Fon Sv Despatch, Moscow to Dept, covering copies of four Oswald letters to Embassy Moscow
1	7 Dec 61	Form fr INS to DD/P, asking for any derog info on Oswald

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1	3 Mar 62	Note saying Navy message of this date is missing from CD 692 sent from Archives
5	26 Apr 62	Collection of Navy Memo to Hoover/FBI plus Navy, USMC, and press items
9	7 Sep 62	Hoover to Helms, plus report fr SAC/Dallas
2	"	Redacted pages from above
7	10 Sep 63	FBI field report on Oswald from Dallas
3	24 Sep 63	FBI field report on Oswald from New Orleans
3	10 Sep 63	FBI field report on Oswald from Dallas (apparently different from above)
2	8 Nov 63	Hoover to Helms, with page from New Orleans report
20	7 Nov 63	Hoover to Helms, with a lot of bio data on Oswald, plus Fair-Play-for-Cuba stuff
20	25 Oct 63	FBI to INS, New Orleans, with much of material above
14	31 Jan 64	Report, not really contemprary with this file, entitled: "Information Developed by CIA on the Activity of ...Oswald in Mexico City..," 28 Sep--3 Oct 63
14	"	Redacted copy of same

COMPILED & ADDED LATER

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Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Wick
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

June 14, 1966

MR. TOLSON:

Justice Fortas returned my call of midday, 6/13/66, late last night. I told him that I wanted to see him about a matter which he might consider bordered on a violation of judicial ethics. He was told that I had been able to discuss matters in confidence with him on several other occasions, i.e., the Jenkins case, [redacted] boyfriend, and other items which Mr. Hoover had me handle with him, and that I therefore felt that he wouldn't mind if this matter was brought to his attention.

(b)(6)

The Black case was then brought up and he was told that although he had disqualified himself, he might not desire to discuss this matter. Justice Fortas replied that he would be glad to not only discuss this matter but any other matter with me on a confidential basis at any time. He then asked me to have breakfast with him at 7:45 a.m. this morning.

Upon seeing the Justice in his home for breakfast, we preliminarily engaged in small talk and eventually got down to the meat of the problem. I gave him a complete rundown on the exchange of correspondence that the Director had had with Katzenbach. He was told specifically of Katzenbach's evasive tactics in attempting to defend Bobby Kennedy. I then mentioned the Black case and told him that while the Director planned to furnish the Attorney General specific, honest, hardhitting answers to the Supreme Court's questions, we nevertheless knew that Katzenbach would throw our answers out the window and present his own slanted version to the Supreme Court. Justice Fortas agreed.

Justice Fortas stated that the entire matter boiled down to a continuing fight for the Presidency. He stated that Kennedy was of course out to capture that segment of voters which in the past had belonged to Vice President Humphrey. He mentioned that Kennedy, to a certain extent, had succeeded in capturing this left-wing group. He added that of course if facts, as possessed by the FBI, concerning Kennedy's approval of wiretapping were made known to the general public that it would serve to completely destroy Kennedy.

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Memorandum to Mr. Tolson

Justice Fortas spoke of the Black case. He stated that after Solicitor General Thurgood Marshall had ineptly and inadequately presented the matter of electronic devices to the Supreme Court, the Supreme Court had held a confidential meeting among themselves. Although Justice Fortas and Justice White disqualified themselves, they still attended the meeting. At the meeting it was decided among the Justices that rather than remand the Black case to a lower court, the Supreme Court would set itself up as a tribunal to gather further information concerning the usage of electronic devices and afterwards make a decision. The Justices, with the exception of Byron White, felt that if the case was immediately remanded to a lower court Attorney General Katzenbach would, in order to win the case, pick his own Judge and thereby attain victory. Justice Fortas stated that some of the Justices in the Supreme Court were somewhat belligerent in their attitude towards Kennedy and Katzenbach. He stated these men would not be "pushed around" regardless of the politics involved.

Justice Fortas stated that the problem at hand was to determine how the FBI's irrefutable evidence exposing Kennedy and the Department in their clear-cut authorization for usage of microphones could be gotten to the Supreme Court and to the people. I showed him at this point several memoranda taken from the file, including the New York telephone memorandum which Kennedy had signed. He stated that there was no doubt in his mind but what the FBI acted in a complete, above-board and honest manner at the specific urging of Kennedy and the Department. He then stated that he fully recognized that Katzenbach would only slant any reply the FBI gave him in answer to the questions posed by the Supreme Court.

After some deliberation, Justice Fortas stated that he thought the best thing to do would be for him to slip in the back door and see the President. He stated he would tell the President all of the above facts. As an aside, Justice Fortas asked me if the President had been aware of the exchange of correspondence pertaining to the Director and the Attorney General. I replied that the Director in all fairness and in order to protect the FBI, had definitely advised Watson and the President. The Justice replied that this was good, however, he felt that the President would want to know his opinion as a result of seeing it from the Supreme Court.

He then stated that his plan of action would serve to protect the President and the FBI and could spell "back seat" for Katzenbach and Kennedy. He mentioned that he would recommend to the President that the President should immediately call Katzenbach in his office and tell him that

CONTINUED.....OVER

Memorandum to Mr. Tolson

he was very greatly concerned about this entire matter and that, in order for honesty and justice to prevail, an arbitrator should be set up who would listen to all of the evidence and then furnish a complete report to the Supreme Court. Justice Fortas added that naturally the arbitrator would be someone whom the President could trust to furnish the absolute true facts.

He stated the next problem would be to find this particular man. He said he had in mind somebody like Ken Royall, former Secretary of the Army. He asked me what I thought of him. I told him I naturally had heard Mr. Royal's name, however, Mr. Hoover would have far better judgment on this matter than I would. He next stated that perhaps someone like Ross Malone, former President of the American Bar Association, would be good in this regard. I told him that we had enjoyed very favorable relations with Mr. Malone. Justice Fortas then mentioned that there was an immediate past President of the American Bar Association from the State of Virginia. I told him he probably was thinking of Lewis Powell. He stated this was correct. He asked me what I thought of Powell. I told him that Mr. Powell had generally concurred with Mr. Hoover's beliefs concerning crime, however, on occasions he had been somewhat naive and a little weak. Justice Fortas stated that he thought Royal or Malone would be the best man.

Justice Fortas told me that he would take the above action immediately. He stated he was going to Jacksonville, Florida, today; however, he would try to talk to the President prior to his departure---if not, he would discuss this matter with the President Thursday morning, 6/16/66. I told him that time was growing short inasmuch as the Supreme Court wanted an answer almost immediately. He stated this was true and that, as a matter of fact, once the arbitrator was appointed all of his facts would have to be gathered and furnished to the Supreme Court within two weeks. He stated he thought this could be done.

Justice Fortas told me that he wanted to mention another subject. He stated that he had already taken steps to disqualify himself in the Hoffa case. He mentioned that the Black, Baker and Hoffa cases would be continuing cases which would go on for many years. He asked me if I knew of any irregularities on the part of Bobby Kennedy in connection with the Hoffa case. I replied in the affirmative, stating that Kennedy on one occasion had specifically asked an FBI representative to place a microphone on an attorney by the name of Haggerty. I stated this action had been taken despite the fact that the FBI had not wanted to do this. Justice Fortas replied that he had felt that such might be the case and that under the circumstances

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he would sit with the rest of the Supreme Court on the Hoffa case and would make certain that Kennedy was exposed. He stated that he felt that the Supreme Court would definitely confirm the decision of the lower court in the Hoffa case. He mentioned that this opinion had been expressed to him by the other Justices.

Justice Fortas next inquired if I had known a former Bureau employee by the name of Courtney Evans. I told him that I did know Evans. He asked if I knew of Evans' association with Kennedy. I told him that we were well aware of this relationship. I then briefed Justice Fortas completely concerning Evans. I told him of the statements made by Edward Bennett Williams with respect to the fact that Kennedy planned to use Evans as his "ace in the hole." I told Justice Fortas that Mr. Hoover had instructed me to call Evans in and to show him approximately eight memoranda which had previously been prepared by Evans. Justice Fortas was advised that Evans had been told that he had not only prepared but approved such memoranda and that we demanded to know if the facts as he had given them at the time of preparation were as true now as they were then. I told Justice Fortas that Evans had affirmed the truthfulness of these facts and had sadly indicated, "Facts are facts and can't be changed." I also told Justice Fortas that we had specifically asked Evans if Bobby Kennedy had been furnished information from microphone coverage in the Black case. The Justice was advised that Evans had admitted that he had frequently briefed Kennedy in this regard. The Justice was told that we next inquired of Evans whether or not Kennedy knew that such information came from microphone coverage and that Evans had replied that there was one specific occasion in which Kennedy specifically could have inferred that the information could only have come from microphone coverage.

Justice Fortas asked if the President knew of Evans' background. I told him that apparently the President did not know this. It was further mentioned that Evans was currently employed by Katzenbach, obviously at the urging of Kennedy. Justice Fortas replied that this was the worst news he had received since Bobby Kennedy's urging that the Viet Cong be allowed to sit down at the conference table. He stated that the President should definitely be told of this fact. He then mentioned that several members of the Supreme Court are well aware of the background of Evans as well as the background of such characters as Sheridan, Bellino, and other henchmen of Kennedy's.

CONTINUED.....OVER

Memorandum to Mr. Tolson

At this point, I told Justice Fortas of the memoranda in which the Director in 1963, at the specific request of the President, had furnished the President concerning Bellino, et al., and that the President had the following day dismissed these individuals from employment at the White House. I mentioned that Kenny O'Donnell had immediately advised Bobby Kennedy, and Bobby Kennedy had had Ed Guthman issue a direct threat to us in connection with this matter. Justice Fortas stated this was typical of Kennedy.

Justice Fortas next made reference to the decision handed down by the Supreme Court yesterday in connection with confessions. He stated that he sincerely hoped that the Director and the personnel of the FBI would pay close attention to the conclusion of the statement by Chief Justice Warren wherein the Chief Justice clearly implied that the FBI was a model agency for all law enforcement to follow. Justice Fortas told me that he wanted the Director to know that following Thurgood Marshall's inept and stupid presentation to the Supreme Court regarding the general matter of confessions, he, Justice Fortas, had been instrumental in instructing Thurgood Marshall to specifically return to the Department and ascertain exactly how the FBI handled the matters of questioning of subjects, arraignment of subjects, confessions, etc. He stated that Marshall therefore, as a result of such action, had found it necessary to submit such procedures to the Supreme Court. He stated on this basis, Chief Justice Warren had no alternative but to pat the FBI on the back.

Justice Fortas inquired as to the Director's opinion concerning Ramsey Clark. I told him that the Director of course had enjoyed a very favorable friendly relationship with Justice Tom Clark for many years and that the Director had also enjoyed a fairly favorable relationship with Ramsey Clark, however, not anywhere near as close as the friendship with his father. I told the Justice that the Director had received information pointing out that despite the fact Ramsey Clark was known as a "Johnson man," he nevertheless could see no wrong in Bobby Kennedy. Justice Fortas stated that he felt Ramsey was a good man but young, naive and one that constantly looked down into the deep waters and could see no wrong in anyone. He stated that Ramsey Clark was a "dreamer." Justice Fortas then inquired as to whether or not there are any loyal Johnson supporters in the Department. I stated that the Director had mentioned on a number of occasions that perhaps the only one who could be declared a loyal supporter of the President's was Ed Weisl, Jr. The Justice expressed no surprise. He stated he thought this to be the case.

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Memorandum to Mr. Tolson

At the conclusion of our discussion, the Justice reiterated once again the action he planned to take with the establishment of an "arbitrator." He stated that I should keep in touch with him on a confidential basis regarding this matter. He also stated that I should not hesitate in the future to get in touch with him concerning any problems in which the FBI's interest should be protected. He reminded me that the President had great faith in the Director and the FBI and that in many instances we undoubtedly found ourselves in a position where we could not protect ourselves. He also stated that while the President had issued specific statements concerning wiretapping and usage of electronic devices, he nevertheless realized that the FBI had to have the advantage of such devices in order to adequately handle its responsibilities both in the security and criminal fields. He stated the President's only concern had been his opinion that there were too many electronic devices in the political field. He stated we of course were not guilty of such practices. He stated he recognized this and he also recognized that the entire hysteria concerning the usage of microphones and electronic devices had been brought about as a result of Bobby Kennedy's brash practices. He stated he deeply resented the fact that Bobby Kennedy had thrown his former partner, Sheldon Cohen (Director, Internal Revenue) to the wolves in connection with these matters.

ACTION: (1) Pursuant to the Director's instructions I will advise Marvin Watson today of the background and current employment of Courtney Evans.

(2) If the Director agrees, I will advise Justice Fortas that the Director is of the opinion that Ross Malone would probably be the best man to serve as an "arbitrator."

RESPECTFULLY,

C. D. DE LOACH

OK. Certainly Royall would be impossible. I had enough of him when he was counsel for the saboteurs & later when as Secretary of War he was instrumental in throwing us out of S.I.S. [Special Intelligence Service, & setting up C.I.A. [Central Intelligence Agency] As to the practicality of an "arbitrator" I have some doubts. It can be another "Warren Commission" & end in a fiasco. H [Hoover]

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CIA HAS NO OBJECTION TO DECLASSIFICATION AND/OR RELEASE OF THIS DOCUMENT

4-750 (Rev. 12-14-88)

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FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

28 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☐ Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552		Section 552a
☐ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☐ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
☐ (b)(3)	☐ (b)(7)(C)	☐ (k)(1)
________	☐ (b)(7)(D)	☐ (k)(2)
________	☐ (b)(7)(E)	☐ (k)(3)
________	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
☐ (b)(6)		☐ (k)(7)

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☒ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

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FBI/DOJ

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SECURITY INFORMATION - SECRET

Theoharis -- Appendix C

March 16, 1953

PERSONAL AND CONFIDENTIAL

MEMORANDUM FOR THE ATTORNEY GENERAL

DECLASSIFIED BY
ON

In connection with a possible unauthorized leak of official Government information, it is believed desirable to institute a technical surveillance of Henry William Grunewald, a prominent figure in Washington, D. C.

I therefore recommend that you grant authority to place a technical surveillance on the residence of Grunewald, Apartment 625B, The Westchester, 4000 Cathedral Avenue, N. W., Washington, D. C., telephone: Woodley 7-5700, or any other residence or office space which he might occupy in the future.

Respectfully,

John Edgar Hoover
Director

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MAR 18 1953

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The Attorney General on February 13, 1953, requested that we cover the activities of Grunewald and asked that a technical surveillance be instituted on his residence. This memorandum is being submitted in accordance with the Attorney General's suggestion. (EHW/rh)

10 am 3/17/53

SECURITY INFORMATION - SECRET

5 6 APR 1 1953

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Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Tolson

DATE: April 28, 1953

FROM : L. B. Nichols

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 12-4-02 BY [illegible]

SUBJECT: TESTIMONY OF HENRY GRUNEWALD KEAN COMMITTEE

Tolson, Ladd, Nichols, Belmont, Clegg, Glavin, Harbo, Rosen, Tracy, Gearty, Mohr, Winterrowd, Tele. Rm., Holloman, Sizoo, Miss Gandy

I saw John E. Tobin, the General Counsel of the Kean Committee, on Monday evening, April 27th. Tobin pointed out that on the first day Grunewald testified in Executive session, [redacted] Tobin then outlined the following particulars:

1. [redacted] Tobin stated he had ascertained this was probably [redacted] b7C

2. [redacted] This was the point which Tobin stated caused him the most concern because there was such a reference in the report of Special Agent [redacted] dated at New York on July 20, 1951, in the investigation on [redacted] b7C

3. [redacted] Tobin outlined this was [redacted] b7C

4. Tobin stated that Grunewald had the habit of passing out ties at Christmas and that as late as 1951 Grunewald had sent ties to the Director, Clyde Tolson and Guy Hottel. I told Tobin if he was inferring that because Grunewald sent ties to these three individuals they might have furnished him the information, that he ought to be pretty cautious because I knew pretty well what the feeling was. I told him in the first place the Director had not seen Grunewald to my certain knowledge for a long period of time; the Director was not intimate with Grunewald; the Director has not appreciated the manner in which Grunewald has thrown the Director's

Executive Session testimony

cc: Mr. Ladd
Mr. Rosen

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65-6165-147

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name around and I had my serious doubts whether the Director had ever seen the ties and I was certain the Director never reviewed the file on [redacted] With reference to Mr. Tolson, I told Tobin that Mr. Tolson was one of the most conscientious individuals in Washington and that certainly Mr. Tolson would not engage in any such activity. Thirdly, all he had to do was look at the record so far as Hottel was concerned; that a few years ago, Hottel was primarily responsible for leading to Grunewald's downfall when he was hiding out from the Senate District Committee.

Tobin was making quite a point about how Grunewald could have gotten the information. I told Tobin categorically I had reviewed the files on the five individuals he had mentioned and that I was absolutely certain Grunewald did not get any information from the Bureau. I further told him that with reference to the information on [redacted] Grunewald was a fairly good investigator and it would have been a simple matter for him to find out [redacted] that with reference to the information on [redacted] told him it was my understanding [redacted] that this itself was a matter of public record; that one of the first things an investigator would do in the investigation of a lawyer would be to check on his admission to the Bar and with the Grievance Committee; that anybody could have gotten this. Further, I inquired whether he had any information to the effect that [redacted] assisted Grunewald in the investigation. He stated Grunewald stated [redacted] assisted him. I told him [redacted] undoubtedly knew [redacted] personally; that [redacted] was in the Department for many years himself and no doubt had friends in the Department. I asked whether he had any information indicating [redacted] was close to McInerney.

[redacted]

b7C

The matter boiled down to the fact he was primarily concerned about [redacted] I told him the investigative reports on [redacted] went to the Attorney General and Vanech on November 9, 1951; Congressman King on August 9, 1951; photostatic copies were given to G-2 on December 26, 1951, and that the Attorney General requested a summary of our files on February 28th; that a summary memo was furnished the AG under date of February 29th on [redacted] and [redacted] He then inquired as to why G-2 would want the information. I told him I could not answer this, but would endeavor to ascertain the answer.

I asked him if he had any indication as to when Grunewald made his investigation. He stated it was shortly after the time when the committee first started checking on Grunewald, which would be in November or December, 1951.

I further told Tobin a reputable news source had inquired regarding [redacted] and [redacted] stating he had heard there were a couple of Communists on the staff and that the evidence was supposed to be on the Director's desk. I told him obviously that was not the case and it would appear that the newspaper source was merely calling us to let us know what was being circulated around town, but obviously we furnished no information; that there was some indication from the source that [redacted] had been helping Grunewald and [redacted] might be in contact with McInerney.

[redacted] I told him he was at liberty to do so.

I told him I would check for the reason why G-2 wanted the information and let him know, which is being done.

b7C

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[redacted]

In my conversation with Tobin, he advised that there was information over in the Senate similar to that furnished by Grunewald. I asked him where in the Senate and he said it came out of Senator McCarran's Office. Inasmuch as [redacted] told me that a member of the King Committee had told the Senator about [redacted] and [redacted] I think it might be well the next time I see [redacted] to confidentially inquire as to whether she recalled what member of the Committee furnished them this information.

I, of course, see no point in talking to [redacted] any further about this matter.

b7C b7D

13-00000

cc Mr. Ladd
Mr. Rosen
Mr. Malley
Mr. Pennington

b7C [redacted]

The Attorney General

May 13, 1953

orig ret to file
65-6165-192
Con 11/22/57

Director, FBI

PERSONAL AND CONFIDENTIAL

JUNE

HENRY WILLIAM GRUNEWALD
INFORMATION CONCERNING

DECLASSIFIED BY [illegible]
ON 12-27-89

The following information concerning Henry William Grunewald was obtained by a confidential source of known reliability on May 11, 1953.

[redacted]

[redacted]

[redacted]

[redacted]

MAILED 11
MAY 14 1953
COMM-FBI

RECORDED

b7C

The Attorney General

[redacted]

b7C

Complete details concerning the information developed in connection with the request of Deputy Attorney General Rogers will, of course, be furnished to him upon the completion of the investigation of these matters.

NOTE:

This is a condensed version of information received from the Washington Field Office which has been set forth in as readable form as possible for the information of the Attorney General. It is to be noted an attempt has been made to furnish the Attorney General with only pertinent information which appears would be of interest to him.

b7C
b7D

[redacted]

(5) Bureau file 67-322 also reflects that, in April 1929, the Bureau conducted an investigation entitled, "William H. Vander Poel, Henry W. Grunewald, Application for Commission in Officer's Reserve Corps." It is noted that Vander Poel had served as an Agent of the Bureau of Investigation during World War I. At the time of the investigation, both were seeking to obtain a commission in the United States Army. The Bureau's investigation reflected that Grunewald was not trustworthy, possessed a bad reputation and had been indicted for violation of the National Prohibition Act, although he was not convicted of this offense. This information was furnished to the Military Intelligence Service by memoranda to the Department dated May 6, 1929, and September 10, 1929.

b7C
b7D

(6) Bureau file 65-6165 reflects that at the request of Mr. Stephen T. Early, Secretary to the President, the Bureau conducted an investigation in June and July, 1940, entitled, "Harry H. Woodring; Henry William Grunewald, also known as Henry Gruenwald, Frederich Wilhelm Grunewald, and Henri Grunewald; Misconduct in Office, Espionage." Mr. Early's request was based on allegations received from [redacted] to the effect that Grunewald was believed to be "in cahoots" with Senator Gerald P. Nye and that [redacted] had told [redacted] that Grunewald, on two occasions, had given the secretary a check in the sum of $4000 for Senator Nye. It was alleged that Grunewald had intimated this money came from Secretary of War, Harry H. Woodring and that the money was paid in connection with War Department negotiations. On June 25, 1940, the Bureau received a memorandum from the Military Intelligence Service reflecting that Mr. Smith W. Brookhart had informed that Service that he had learned through [redacted] an alleged employee of the French-English Intelligence Service in 1917-1918 that the head of Nazi espionage in Washington, D. C., was Frederich Wilhelm Grunewald, also known as Henry William Grunewald, Westchester Apartments, Washington, D. C. It is noted that McDonald at that time was also residing in the Westchester Apartments and during 1937 and a portion of 1938, Grunewald shared offices with McDonald and former Senator Arthur R. Robinson, in the Munsey Building, Washington, D. C. (1)

b7D per

(1) 65-6165-3

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Memorandum to Mr. Tolson

At the conclusion of our discussion, the Justice reiterated once again the action he planned to take with the establishment of an "arbitrator." He stated that I should keep in touch with him on a confidential basis regarding this matter. He also stated that I should not hesitate in the future to get in touch with him concerning any problems in which the FBI's interest should be protected. He reminded me that the President had great faith in the Director and the FBI and that in many instances we undoubtedly found ourselves in a position where we could not protect ourselves. He also stated that while the President had issued specific statements concerning wiretapping and usage of electronic devices, he nevertheless realized that the FBI had to have the advantage of such devices in order to adequately handle its responsibilities both in the security and criminal fields. He stated the President's only concern had been his opinion that there were too many electronic devices in the political field. He stated we of course were not guilty of such practices. He stated he recognized this and he also recognized that the entire hysteria concerning the usage of microphones and electronic devices had been brought about as a result of Bobby Kennedy's brash practices. He stated he deeply resented the fact that Bobby Kennedy had thrown his former partner, Sheldon Cohen (Director, Internal Revenue) to the wolves in connection with these matters.

<u>ACTION:</u> (1) Pursuant to the Director's instructions I will advise Marvin Watson today of the background and current employment of Courtney Evans.

(2) If the Director agrees, I will advise Justice Fortas that the Director is of the opinion that Ross Malone would probably be the best man to serve as an "arbitrator."

RESPECTFULLY,

C. D. DE LOACH

OK. Certainly Royall would be impossible. I had enough of him when he was counsel for the saboteurs & later when as Secretary of War he was instrumental in throwing us out of S.I.S. [Special Intelligence Service] [Central Intelligence Agency] & setting up the C.I.A. The practicability of an "arbitrator" I have some doubts. It can be another "Warren Commission" & end in a fiasco. H [Hoover]

13-00000

JOHN EDGAR HOOVER
DIRECTOR

Federal Bureau of Investigation
United States Department of Justice
Washington, D. C.

May 23, 1941

[redacted] b7c

- 51018

MEMORANDUM FOR THE DIRECTOR

With further reference to Henry William Grunewald, in whom we are presently interested, I am attaching a memorandum for Mr. Carson from [redacted]

b3 b7C per IRS

b3 per IRS

[redacted]

For your approval there is attached hereto a letter for the Attorney General's signature, to the Secretary of the Treasury [redacted]

Respectfully,

P. E. Foxworth

T-4 ENIT
9-11-40

65-3165-25

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The investigation in this matter, which was closed July 8, 1940, revealed that the original allegations were apparently based on surmise and suspicion and not on any definite knowledge of the complainants. Neither the conditions alleged nor any irregularity on the part of Grunewald or former Secretary of War Woodring were discovered. There was no evidence developed that Grunewald was engaged in any activity for the German government. The result of the investigation in memorandum form were furnished to Mr. Early on July 9, 1940. (1)

(7) Bureau file 65-6165 also reflects that in May, 1941, the Military Intelligence Service advised the Bureau that information had been received by one of its informants that Grunewald was the pay-off man for German agents in the United States and was also contact man for various American peace and subversive organizations. Subsequently, the Bureau ascertained that the informant of the Military Intelligence Service was [redacted] and it was felt that the Military Intelligence Service was merely resurrecting old information in view of the fact that the Bureau had previously investigated the same allegations made by [redacted] However, on May 13, 1941, a technical surveillance of Grunewald was authorized and from June 4, 1941 through August 1, 1941, such surveillance was maintained on his apartment in the Westchester Apartments. No definite information was developed, indicating that Grunewald had violated any specific Federal Statute. (2)

b7D per Army

(8) Bureau file 65-6165 reflects that on September 15, 1942, the Omaha Office of the Bureau received a complaint from the Military Intelligence Service that Henry William Grunewald had, on the previous evening, given $110.00 in currency to two Army Privates attached to Headquarters, Seventh Service Command, while Grunewald, [redacted] were drinking at a bar in the Fontenelle Hotel in Omaha. The two Privates were then engaged in studying intelligence work, and becoming suspicious of Grunewald's apparent generosity with his money, reported the matter to the Omaha Office. They indicated that [redacted] had approximately $16,000 in her purse. This money was observed when she opened her purse in order to furnish currency to Grunewald to pass out to the crowd.

b7C b7D

Grunewald was interviewed by two Agents of the Omaha Office on September 15, 1942, regarding the matter and he identified himself as being connected with the Alien Property Custodian's office in Washington, D. C., by exhibiting travel authority 55G, signed by James E. Markham, of the Alien Property Custodian's Office in Washington, D. C. Grunewald claimed to receive $8000 per year as salary from the Alien Property Custodian's Office. He admitted passing out money promiscuously in the bar and stated that he did not wish the matter reported to his superiors in Washington although he was willing to furnish information about the incident confidentially to the Bureau. He stated

(1) 65-6165-8
(2) 65-6165-22; 65-6165 Sub 1, Serial 1 to 122

13-00000

Serial Removal Charge Out-
[redacted]
4-674 (Rev. 7-18-73)

b7E

Subject HENRY WILLIAM GRUNEWALD

This serial, the original memorandum from the FBI to the Attorney General dated 3/16/53 , which was returned to the Bureau signed by the Attorney General authorizing FBI to conduct electronic surveillance, has been permanently removed for retention in the [redacted] per memorandum [redacted] to [redacted] dated 7-13-73. See 62-115687-1 for details and where maintained. b7E

b7C

Removed By 343 Date 1/21/74

Complete File and Serial Number 65-6165-124

13-00000

Office Memorandum • UNITED STATES GOVERNMENT

WPR:MJH:eo

TO : J. Edgar Hoover
Director, Federal Bureau of Investigation

DATE: April 13, 1953

FROM : William P. Rogers
Deputy Attorney General

SUBJECT: Request of Kean Committee for Henry W. Grunewald Files

Mr. Tolson
Mr. Ladd
Mr. Nichols
Mr. Belmont
Mr. Clegg
Mr. Glavin
Mr. Harbo
Mr. Rosen
Mr. Tracy
Mr. Gearty
Mr. Mohr
Mr. Winterrowd
Tele. Room
Mr. Holloman
Mr. Sizoo
Miss Gandy

Enclosed is a copy of a letter dated April 7, 1953, from the Chief Counsel of the House Subcommittee on Administration of the Internal Revenue Laws, requesting permission to inspect the Immigration and Naturalization Service files and the personnel files relating to Henry W. Grunewald including his service with the Office of Alien Property and the Federal Bureau of Investigation.

The Immigration and Naturalization Service files and the Alien Property files have been obtained and will be made available, minus any FBI reports, in accordance with policy.

Advice would be appreciated whether the Bureau has a personnel file on Grunewald, and, if so, whether the Bureau would have any objection to making it available, minus any investigative reports, for examination by a Subcommittee representative. If the Bureau has such a file and no objection to its examination, please advise whether the Bureau would prefer to make it available for examination in one of the Bureau's offices or in this office.

cc Grunewald to Mr. Nichols

Airtel [redacted] 4/14

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EXPEDITE PROCESSING

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14 May 1992

Note For: David Pearline, OCA

Subject: Suggested Qs & As for Hearing on JFK Assassination Documents

(Dave Gries suggests additional Qs and As along the following lines)

Q. Many of the Oswald documents transferred to the National Archives earlier this week were said to have been in the Archives previously . Is this correct ?

Ans. Yes, but most of the documents were originated by other agencies, and we were not aware of what those agencies had previously released.

Q. There appears to be little information of interest in the Oswald file that was released. Is this true ?

Ans. Yes this is essentially accurate. But the objective in transferring the file was to demonstrate our good faith commitment to release as many documents related to the assassination as possible, and as expeditiously as possible

John Pereira
x 76160

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BC-TEXT-ASSASSINATIONS-MULTITAKES
THE REUTER TRANSCRIPT REPORT

HOUSE GOVERNMENT OPERATIONS LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE HEARING
Topic: H.J. Res. 454, Assassination Materials Disclosure Act of 1992
Witness: CIA Director Robert Gates
Location: Rayburn Building, Room 2154
Time: 10 a.m.
May 15, 1992
*****

The editor of the report is Steve Ginsburg. Tim Ahmann, Eric Beech, Peter Ramjug and Paul Schomer also are available to help you. If you have questions, please call 202-898-8345. For service problems inside the District of Columbia, call 202-898-8355; outside D.C., call 1-800-537-9755.
*****
*****
This transcript is provided by News Transcripts, Inc. If questions of content arise, call 682-9050
*****

ROBERT GATES (director, CIA): Thank you, Mr. Chairman.

I'm here to provide my views on House Resolution 454, the assassination materials disclosure act of 1992. I very much appreciate the opportunity to appear before the committee, just as I did before your colleagues in the Senate last Tuesday.

I can summarize my statement, I think. It is largely the same as the one I did earlier. Let me just say, as I have said, that I'm in complete agreement with the effort to underline the joint resolution, that is, the effort to declassify and make available to the public as quickly as possible government documents relating to the assassination of President Kennedy.

Further, I believe that maximum disclosure will discredit the theory that CIA had anything to do with his murder.

I have undertaken a number of efforts at CIA to accelerate the declassification of historical materials, creating a new organization to do that. It will be classified, or review for declassification, all documents over 30 years old, and Soviet estimates up to 10 years ago.

I've asked them to take as their first priority the review for declassification a review of the documents relating to the assassination of President Kennedy. And we have proceeded with that, without waiting for legislation.

And I've indicated earlier this week, we've declassified the first set of these records, the pre-assassination Oswald file. And these have now been transferred to the National Archives for release.

It's a small fraction of what we have, but I want to do it right away as an earnest of our intention to move on, to declassify these documents and to get them before the public as quickly as possible.

I've also made publicly available this week the agency's new guidelines for historical review and declassification.

In connection with these guidelines I have recently commissioned a task force to review agency procedures under the Freedom of Information Act. I've instructed this task force to ensure that our internal FOIA procedures are consistent with the approach that I've described for historical declassification.

Although the task force will have to explore the difference between current documents and those that are often requested under FOIA, and 30-year-old documents placed under historical review programs, my intention is to bring to the FOIA process a much more positive attitude toward declassification and the release of government or CIA records.

The chart that I've brought along with me describes the nature of CIA's collection of documents, about 250,000 to 300,000 pages of material. And I don't need I think to go into any further detail on that.

As I indicated, only about 11 of the pre-assassination documents belong to CIA, and we have released those, and as I did earlier in the week, brought along that file simply to show how thin it was before that time.

It was only after the assassination that CIA accumulated most of the documents that it had; 33,000 pages on Oswald alone.

There has been some comment on the pre-assassination Oswald file, and how little it contained. I want to reemphasize that this pre-assassination material is but the first installment of all the material we will review; merely an earnest of our intentions.

All of the assassination-related documents we have will be reviewed for declassification, and we will transfer the declassified documents to the archives as they are completed without waiting for work on the entirety to be completed.

Mr. Chairman, you have asked about assassination materials that may be held by other intelligence community agencies. The FBI will describe its holdings separately, which I assume include both intelligence and law enforcement records.

The National Security Agency and the State Department's bureau of intelligence and research report after a preliminary search that they have identified a relatively small amount of material responsive to previous inquiries by the Warren Commission, the Church committee, and the House Select Committee on Assassinations.

The Defense Intelligence Agency, which did not come into existence until 1961, has identified no assassination material to date, and it anticipates that any holdings it might have would be minimal, because its mission at the time of the assassination focused on foreign military order of battle.

I've indicated in my statement for the record that CIA cannot release a number of documents unilaterally, because of limits in the privacy act, which protects the names of Americans against unauthorized disclosure; the sequestration of many documents by the House Select Committee on Assassinations; and

the fact that many of the documents belong to agencies other than CIA.

However, we've already taken steps to lift the sequestration, to coordinate with other agencies, and to begin the process of declassification.

As I indicated earlier in the week, if necessary, and in the absence of legislation, I will ask the House of Representatives for a resolution permitting CIA to release the results of the declassification effort on the sequestered documents. And I hope that we can work together, Mr. Chairman, to remove any obstacles that might arise in releasing the sequestered documents.

I also have indicated in my statement for the record that I assume there will be some materials that cannot be released, for a variety of reasons, including privacy concerns, or the exposure of intelligence sources and methods.

And let me again take a moment to give an example of this type of material.

During the investigation by the House Select Committee on Assassinations, I understand that a number of security and personnel files of CIA employees were requested. These files contained fitness reports, or performance evaluations, medical evaluations, and credit checks on individual CIA officers.

Although irrelevant to the question of who killed President Kennedy, these and other personal documents ultimately ended up in the sequestered collection of documents. I do not believe that the benefit to the public of the disclosure of this information outweighs the clear privacy interest of the individuals in keeping it confidential.

Similar privacy concerns exist with documents containing derogatory information on particular individuals, where the information is based on gossip or rumor.

Our files also contain the names of individuals who provided us intelligence information on a promise of confidentiality, and we would not release their names in breach of such a promise.

Where we cannot disclosure such information to the public, the agency will make redactions and summarize the information in order to ensure that the maximum amount of information is released while still protecting the identity of an agent, or the privacy of an individual.

As I told your Senate colleagues earlier in the week, if legislation is not passed by the Congress and signed by the president regarding these papers, to enhance public confidence and to provide reassurance that CIA has not held back information relative to the assassination, I would appoint a panel of distinguished Americans from outside of government, perhaps including former jurists, to examine whatever documents we have redacted or kept classified.

And they would then issue an unclassified report on their findings.

I believe that these actions attest to the seriousness of our intent to get these documents declassified and released, and to open what remains classified to outside nongovernmental review.

It is against this background that I cite our few technical reservations about the mechanism established by the joint resolution to achieve this result.

First, vesting in a body outside--in an outside body the determination whether CIA materials related to the assassination can be released to the public is inconsistent with my own statutory responsibility to protect intelligence sources and methods.

Second, I am concerned that the joint resolution contains no provision requiring security clearances or secure document handling by the assassination materials review board or its staff.

Third, I'm concerned that the joint resolution does not provide the agency with the opportunity to object to the release of CIA information contained in documents originated by the Congress or the Warren Commission.

Under the joint resolution documents originated by these entities can be released directly by the executive director of the assassination materials review board, without any review by the president or the executive branch.

Fourth, the joint resolution provision for a 30-day period for agencies and departments to appeal decisions of the executive director to release information may not provide sufficient time for meaningful review of what could prove to be a large volume of material at one time.

Fifth and finally, Section 6 of the Joint Resolution, which outlines the grounds for postponement of a public release of the documents, makes no provision for postponing release of documents that may contain executive privilege, or deliberative process, attorney-client or attorney-work product information. While such privileges could be waived in the public interest, and in fact are not likely to arise with respect to factual information directly relating to the assassination, they would be unavailable in the joint resolution in the rare case they might be needed.

These are technical problems, and I believe they can be solved in ways that can expedite the release of documents bearing on the assassination of President Kennedy. But again, whatever the future course of this legislation, CIA is proceeding even now to review for declassification the relevant documents under its control. And further, we will cooperate fully with any mechanism established by the Congress and the president to declassify this material.

That concludes my summary of my statement, Mr. Chairman.

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The Reuter Transcript Report
Assassinations/hearing
May 15, 1992
MORE

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THE REUTER TRANSCRIPT REPORT

HOUSE GOVERNMENT OPERATIONS LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE HEARING
Topic: H.J. Res. 454, Assassination Materials Disclosure Act of 1992
Witness: CIA Director Robert Gates
May 15, 1992
(First Add)
*****

x x x Mr. Chairman.

REP. JOHN CONYERS JR. (D-MI): Thank you very much, Mr. Gates. We appreciate your statement. And I only have a couple of observations.

Putting them altogether, I'm interested in how much material has been destroyed by CIA that we may never know about? Why the Lee Oswald file was opened at the CIA 14 months after his defection. Was Oswald in fact a Soviet spy? And was that picture in his file that was thought to be him, was that an error? Or was there something involved in that that you can shed some light on? Q's

GATES: Well, at the risk of appearing appallingly ignorant, Mr. Chairman, I don't know the answers to any of those questions. But I will take them for the record and respond quickly to the committee. A

REP. CONYERS: Well, thank you so much.

We're here against the background of history and the fact that this is the murder of the century. A president of the United States, sitting president. And I thought it was exemplary of the CIA--I never thought I'd be saying this this morning, either--to find out that you had permitted your representatives to discuss the subject matter with various think tanks around the city, one of which was included was the Institute for Policy Studies, whose cofounder is Marcus Raskin.

And I was told that there was a very candid exchange about this subject matter which was the purpose of the meeting. Some dozen or more of your representatives were meeting with them.

And I think that that is a very healthy sign of the times. I never thought it would happen, so I never thought I'd say what I am saying today. But one of the parts of that discussion was that Oliver Stone, the producer of the movie, has been parading around the country saying that you will not meet with him.

And as a conciliatory member of this Congress, could I facilitate such an arrangement so that it would help relieve the confusions and the disturbances of a lot of people, since he

has, as a result of this movie, become apparently an expert on this subject?

GATES: Mr. Chairman, I would characterize him as a self-styled expert on this subject. I am no expert at all. I think I have moved very far in the direction of releasing these documents, as you indicated at the outset of the hearing. I think that the agency has in many ways set a standard in terms of its willingness to release these documents, and our determination to do so whether or not there is legislation.

Frankly, I find that the allegations contained in the--that I have been told about in the movie; I have not seen it--are offensive to the agency, and to the American government, and to a number of people who were in office at that time from the President of the United States on down, President Johnson on down.

It is not entirely clear to me what particular purpose would be served by a meeting between myself and Mr. Stone.

REP. CONYERS: Can you tell me about the sympathy and understanding that you may have for the American people's confusion and differences of view about whether Lee Harvey Oswald was alone the sole assassin of the president?

GATES: Well, my view, and it's a very personal view, Mr. Chairman, is that--and I have never made a study of the assassination; I have not read the many books that have been written about it--but my personal view is that the enormity of the event and the sense of tragedy that the American people felt, and still feel, over that event, is so great that the idea of a single individual, a single irrational individual, committing an act of such enormous historical consequence is enormously difficult to--for them to accept at face value.

And in many respects, it is similar to the continuing controversy over the assassination of President Lincoln, as more than 100 years later we still read books about conspiracies and so on in that respect.

And by the same token, and with all due respect to his memory, there doesn't seem to any similar kind of controversy about the assassination of President McKinley.

And so I think it is the inability of a lot of people to accept such an irrational act with such enormous consequences that has contributed to this. And I think that the--one of the concerns that grows out of this film is not that people accept it at face value but rather than particularly young people who may not read much history and may not read the reviews and may not read what historians have to say that is critical about the movie, but come out of it with the sense that there is some fire in all that smoke; that he may not have it right, but there must have been some sort of conspiracy.

And I've had, as I indicated to you the other day, I had a conversation about this with a distinguished United States Senator who had sent some of his smartest young staff out to see the money movie, and they came back and the reaction was not that they accepted what the movie said, but their concern that their government had in some way been involved. And frankly it was that more than anything else that prompted me to decide that it was imperative to get these documents out and try to dispel the

suspicions that had been created.

REP. CONYERS: Thank you very much. Mr. Schiff.

REP. STEVEN SCHIFF (R-NM): Thank you, Mr. Chairman.

First, Director Gates; I want to thank you for appearing personally here. I know that you have a heavy schedule, and I'm sure all the members of the committee do appreciate that.

I have just a few questions, but I do have a couple of observations on your statement. The first is, I do not know personally whether Mr. Oliver Stone who testified before us at the last hearing is a real expert on the assassination of President Kennedy, or as you suggested a self-styled expert.

I do know this, though. I do know that it's because of his movie that members of the Congress of the United States are discussing this matter publicly with the director of the CIA. And I'm quite positive that his movie has caused all of that to happen today, and I personally give him the credit for that.

Second of all, I note your observation that there is not a lingering conspiracy theory involving the assassination of President McKinley. To your knowledge, anywhere in the government, your agency or elsewhere, are there any documents or information which for any reason are not being released with respect to the assassination of President McKinley?

GATES: Well, I can't speak to that from direct knowledge, Mr. Schiff. But I will say that since it predated CIA's formation by 47 years, I imagine not.

REP. SCHIFF: Well, you see, I think that's the central point here, is that there is--I'm not sure we'll ever resolve all the questions about the assassination of President Kennedy. You are correct that we have not resolved all the questions about the assassination of President Lincoln. On national TV I saw a program recently suggesting that John Wilkes Booth did not actually die as suggested, and gave reasons for that.

But the difference between the assassination of President Kennedy and these prior terrible assassinations in our country's history is, this is the one situation where the government, for whatever reason, and for whatever circumstances, still holds information which it considers to be confidential.

And that's the root of this controversy now, and that's the root of this hearing, I think.

And I made a note of items that you as director of the CIA would consider to be still--to still warrant confidentiality today. And I made notes of three. If there were more, I apologize that I missed them. I'm not talking about the procedures, which you made observations about, and which I think you'll find the committee willing to discuss with the executive branch.

But three classifications of records. The first is personnel records involving, I gather, government agents, perhaps CIA agents, fitness reports and credit reports, first of all.

Second of all, the privacy issue because government

files often accrue totally unsubstantiated information which can be fairly characterized as gossip, but which do get into the files when a total investigation is done; and third, where we've made a specific promise of confidentiality to a particular informant.

Before I ask you about those three, can I just ask, are there any other areas of documents that you as director of the CIA believe should not be released in terms of a generic category like these?

GATES: No, I would only include in the protection of sources also the protection of intelligence methods. But I think you've captured it.

REP. SCHIFF: Let me just go back on each of these briefly.

On protection of personnel records, why would those have gotten--I understand what you're talking about. I think we all do matters where there is internal monitoring of your own agents, which I understand is a necessity at times, why would those records have gotten into the assassination records on President Kennedy? Why are they mixed in there, do you know?

GATES: I don't really know, Mr. Schiff. I think, as I understand it, from the materials that were prepared for me, a great deal of documents were swept up in the material that is kept, and as my statement indicates, I don't think I read this part of it: These files contain everything from the most mundane newspaper articles, which are obviously not classified, or shouldn't be, to the most sensitive intelligence sources.

And so I think it's just a hodgepodge. As I also indicated, part of the problem that we have in going through these documents is that they are not indexed; they are not catalogued; and they really have no organization to them.

So when I started asking some months ago what was in the documents, what did we have, it actually took quite some time even to perform a survey to get some kind of idea of what kinds of records were in there.

But I assume that these kinds of things were just swept up with a lot of other material.

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The Reuter Transcript Report
Assassinations/hearing (first add)
May 15, 1992
MORE

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THE REUTER TRANSCRIPT REPORT

HOUSE GOVERNMENT OPERATIONS LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE HEARING
Topic: H.J. Res. 454, Assassination Materials Disclosure Act of 1992
Witness: CIA Director Robert Gates
May 15, 1992
(Second Add)
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x x x other material.

REP. SCHIFF: Well, let me go on to one of the other categories, and that is, where the government has given a promise of confidentiality, the government ought to keep that. Can't the information be released without revealing the informant? Because I think it's the information that is desired here, not necessarily the identity of who provided it.

GATES: My own view, Mr. Schiff, is that that should be the case in almost every instance.

REP. SCHIFF: Finally with respect to intelligence methods, I understand that there's a national security point there. But we are also talking about 30 years ago, approximately.

Are our intelligence-gathering methods so unchanged in 30 years that you believe that revealing how agencies gather and collect and evaluation information would present a national security risk today if revealed?

GATES: Well, first of all, if an intelligence method is no longer in use, then I think it no longer--and there's little prospect of it ever being used again, I see no reason to protect it.

I think here again, though, that the focus should be on the information provided by these sources and methods, rather than the identification of the sources and methods themselves.

The only reason I would seek to protect them is in those instances in which those techniques are still being used, or we think there is a good chance they will be used again.

With respect to sources, I think that we have a much longer standing commitment to protect them. But again, I'm prepared, either under the legislation, through the board that would be established, or in the absence of legislation, through an outside panel, to let people who are not in the intelligence business review any of that material that we had held back to see that we had justifiable reasons for doing so.

REP. SCHIFF: So your overall position, Director

Gates, is that everything that can be released should be released?

GATES: Absolutely, Mr. Schiff.

REP. SCHIFF: Thank you very much. I yield back, Mr. Chairman.

REP. CONYERS: Thank you, Mr. Schiff.
The chair recognizes Mr. Thornton.

REP. RAY THORNTON (D-AR): Thank you very much, Mr. Chairman.

And thank you, Director Gates, for a very forthcoming and positive testimony before this committee. I think that it is important to emphasize that we share an interest in disclosing all of the information related to the substance of this without jeopardizing the capacity of your agency to conduct its business.

And in fact, Section 6 of the proposed resolution says that disclosure to the general public of assassination material or particular information in assassination material may be postponed if its release would--and there's a whole list--but among that list is, if an intelligence source or method which is currently utilized or reasonably expected to be utilized by the United States government is involved.

And Director Gates, I believe that you're telling us, and I want to ask you directly, that if the standards that are contained in this resolution were adopted, and the CIA's records as you have suggested they should be, were released, with those safeguards, do you believe that any sensitive sources or methods would be revealed or compromise by the information which is released?

GATES: I think that the provisions that provide for the protection of sources and methods and that allow us ultimately the president to have the final say would provide adequate safeguards.

REP. THORNTON: The protections in the bill for intelligence-related information then are sufficient?

GATES: Yes, sir. I've indicated in my testimony we would ask the Congress to consider I think two additional categories of information. I mentioned executive privilege, or deliberative process. Attorney-client kinds of information.

Again, we think that there would be very little information that would be withheld under those circumstances, but without mentioning it, that recourse would be denied.

The second is, I think it would be useful to pick up on the same protection that the Congress has granted in separate legislation in terms of not revealing the names of covert employees of U.S. intelligence agencies.

REP. THORNTON: I appreciate those suggestions. But in summary the release of the CIA records in accordance with the general outline contained in this resolution would not damage any current CIA operations; is that correct?

GATES: No, sir, not in keeping with those safeguards.

REP. THORNTON: I know, Director Gates, that you've recently released, as you told us, some materials regarding Oswald. Can you make a commitment here to promptly release all of the files about the CIA's operations against Fidel Castro in the late '50s and early '60s?

GATES: We certainly--the files concerning Operation Mongoose, AMLash (phonetic), and so on, are included in the documents that will be reviewed in the--

REP. THORNTON: That was my specific followup question as to whether those files would be included in the material.

GATES: Yes, sir.

REP. THORNTON: I want to thank you again for your testimony. Like you I have not seen the movie, and that is not the basis of my concern. The basis of my concern is to make sure that all of the information that is in government possession relating to this assassination be released. Because in addition to the movie, I believe there are some inferences drawn by the House committee on investigations, and by the Garrison jury, that while no showing of a government conspiracy, that there were allusions to the possibility of an external conspiracy, and whatever may have existed needs to be dispelled by having the light of full disclosure shown upon the events of that time.

Would you agree with that, sir?

GATES: I agree with that totally, Mr. Thornton.

REP. THORNTON: Thank you. I yield back the balance of my time.

REP. CONYERS: Thank you very much, Mr. Thornton. The chair recognizes Ms. Mink.

REP. PATSY T. MINK (D-HI): Thank you very much, Mr. Chairman. I too want to commend the forthright position that you've taken as the head of the CIA in initiating steps to release important documents that will contribute to the better understanding of the public at large as to what exactly happened.

I also agree with my colleagues that while the conclusions and inferences that were part of Oliver Stone's movie are under question, and perhaps totally negated by your agency, they are nevertheless, the basis for the renewed attention and concern as to exactly what happened on that day.

And therefore, it seems to me appropriate that the chair of this committee asked you to direct your attention to the content of that movie, because what we need now is an informed basis upon which to look at it.

I happen to have seen it, unlike some of my colleagues. And there are a number of very troublesome questions that the movie raises, and I am in no position to

evaluate it, as most of the people in the country. And therefore, the disclosure of these documents are extremely important.

Looking at your testimony, Mr. Gates, I notice that you indicate that some of the documents which are relevant to this inquiry cannot be released by the CIA because they are in fact documents which belong to other agencies.

~~Would you comment on that and clarify that particular~~ statement in your testimony?

GATES: Yes, ma'am. In the course of the post assassination investigations, a great deal of information was shared among the agencies. For example, in the 17 boxes of Oswald records that we have, approximately 40 percent of those documents originated with the FBI, and were simply made available for information to CIA.

About 20 percent originated with the State Department or other agencies, immigration and naturalization and so on.

Under the third-agency rule, it is our obligation to leave it to those agencies to declassify their own documents. We cannot do that, and by the same token, they exercise the same practice with us.

REP. MINK: Now, would the legislation that we are considering now make it possible for your agency, as the custodian of records that you have been given by other agencies, be included in your own disclosure? Can we make that possible?

GATES: I don't think the legislation would do that, Mrs. Mink. I think that it would simply require those other agencies to undertake the same steps that we are in terms of reviewing for declassification the documents that they originated.

We don't hold the record copies of those documents. We simply have copies of them.

REP. MINK: Now, in the materials that you have volunteered for disclosure, with reference to Oswald, how much of the materials in your possession, therefore, had to be excluded because they were documents that your agency had been provided by other governmental agencies?

GATES: Let me answer, and then check with my colleagues to make sure I got it right, in this very thin file, of the 34 documents, I think only 11 were originated by CIA. My impression is that the others had all--belong to other agencies had all already been declassified. That's correct.

REP. MINK: So that we have the total file with reference to Oswald now in the public domain?

GATES: The total file that CIA had in its possession.

REP. MINK: But you just said that all the other agencies have also already declassified, meaning that they are part of the public domain, and cannot be obtained, if not necessarily voluntarily released by those agencies, are now available public documents?

GATES: I don't know whether that's the case or not. Only the documents that we had from them have been released as part of the file we released. They may have other documents pre-November 22nd, 1963 that we didn't have.

REP. MINK: In other words, in reference to Oswald everything that you had in your possession, regardless of whether it belonged to other agencies, because you found them to be declassified, have all been released?

GATES: That's my understanding, yes, ma'am.

REP. MINK: Now, there is a Washington Post article of May 14th which suggests that the materials that have been disclosed with reference to Lee Harvey Oswald contain nothing new. Is that your understanding also of the documents that you released to the archives?

GATES: As I indicated earlier, I am certainly no student of this material. I do not know the answer to that question.

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The Reuter Transcript Report
Assassinations/hearing (second add)
May 15, 1992
MORE

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THE REUTER TRANSCRIPT REPORT

HOUSE GOVERNMENT OPERATIONS LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE HEARING
Topic: H.J. Res. 454, Assassination Materials Disclosure Act of 1992
Witness: CIA Director Robert Gates
May 15, 1992
(Third Add)
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x x x that question.

REP. MINK: Does anyone in the room here from your agency have an answer to that question?

GATES: Some of the documents had not previously been released, so would have represented new information.

REP. MINK: Might we know today what exactly were new items that had not been released previously?

GATES: This is David Grease (phonetic). He is the director of our center for the study of intelligence.

DAVID GREASE (director, center for the study of intelligence): Mrs. Mink, some of these documents had been previously released. About half of those that are--originated at the CIA.

Among the documents of other agencies that were in our files, it's my understanding, but this would have to be verified, that almost all of them, if not all of them, had been previously released.

REP. MINK: So what consisted of new information that the public had not already had in its published files somewhere? } Q.

GREASE: Yes, I understand. We would have to respond to you separately from that. I cannot from memory tell you precisely which documents were new. } A.

I do know that the new ones are not of much consequence. They do not contain any information that is particularly enlightening. But we can tell you after the hearing what those are.

REP. MINK: Can you explain a second, if the CIA had been alerted by the State Department by a cable dated October 31st, 1959, with respect to Oswald's defection, why the CIA did not open a file until 14 months alter?

GATES: I don't think we have the faintest idea, Mrs.

Mink.

REP. MINK: There was no policy in effect in 1959 with reference to persons who publicly announced defection to the Soviet Union?

GATES: I just don't know.

REP. MINK: Has there been any inquiry made within the agency to determine that 14-month lapse?

GATES: I don't believe so.

GREASE: We did attempt to contact people who might have been involved at the time, and that largely failed, and in addition, we gained no information. We don't know.

REP. MINK: Now, I don't know the basis of this conclusion in the news article, but it indicates that the materials that were turned over to the National Archives, did not indicate that they were originals, unexpurgated originals, as the article says, that the materials turned over had been altered, revised, in some way by the CIA before they were released to the archives. Is that a true statement?

GREASE: It is not correct to say that they were altered or revised. Our effort was to furnish the file that we had. That file contained copies of original documents. Therefore we thought it appropriate to furnish precisely what we had.

What might be characterized as alterations by some by us are redactions of the kind of material that Director Gates has described to you, meaning some numbers, some names, but I can assure you, nothing of any consequence.

These are Privacy Act considerations and things of that nature.

REP. MINK: Mr. Gates, one final question: In your testimony you indicated that you did not support vesting in an outside body the determination of whether CIA materials related to the assassination can be released to the public, and to agree to that would be inconsistent with your statutory responsibility.

I take it, then, that you oppose the provisions in this bill which call for such vesting in an outside body?

GREASE: Frankly, my own view is that the provisions that provide that the president can have the final say, normally I would not shift to the president my burden for protecting sources and methods. But it seems to me that, given the unique circumstances of this case, it seems to me that that is one part of the bill that we could find a way to work around.

REP. MINK: Then is it not somewhat inconsistent in your testimony in saying that if this bill didn't pass and didn't become law, you would appoint a panel of distinguished Americans from outside the government to do the exact same function for your agency?

GATES: No, ma'am, what I would appoint that panel to do is examine all the redactions that we had made, and to examine all of the documents that we decided could not be declassified, and then provide a report to the American people on whether or not any of those redactions or those withheld documents had a bearing on the assassination.

They would not make the decision to declassify.

REP. MINK: Now, would the establishment of such a panel of outside experts in effect also under your definition violate the Privacy Act? Q.

GATES: I don't know the answer to that. I would have to have--I would have to have our attorneys look at it. A.

REP. MINK: Thank you, Mr. Chairman.

REP. CONYERS: Thank you very much, Mrs. Mink. You've touched on some very important areas.

There are just two related considerations that I'd like to bring to your attention, Director Gates. One is in the Freedom of Information Act, where electronic data is a discretionary matter with the agency, and we would like you to review the problem with the release of CIA electronic data of previously released requests. It's a technical point, but I bring it to your attention for your future consideration.

And finally, with regard to the Castro records, and AMLash and Gilverto Lopez (phonetic), it is my hope that you will elevate those as high up on your agenda for reconsideration for release as soon as appropriate. There are a number of members in the Congress that have asked me to bring this matter to your attention as well. HRG Note

GATES: I think we can do that, Mr. Chairman.

REP. CONYERS: Thank you very much. And on behalf of the committee, we deeply appreciate your appearance before us today.

GATES: Thank you, sir.

END GATES TESTIMONY
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The Reuter Transcript Report
Assassinations/hearing (third and final add)
May 15, 1992
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Assassination Records Review Board
600 E Street NW • 2nd Floor • Washington, DC 20530
(202) 724-0088 • Fax: (202) 724-0457

January 30, 1998

CIA HAS NO OBJECTION TO DECLASSIFICATION AND/OR RELEASE OF CIA INFORMATION IN THIS DOCUMENT

The Honorable Dan Burton
Chairman
Committee on Government Reform and Oversight
2185 Rayburn House Office Building
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter is the Assassination Records Review Board's sixth monthly progress report, as required by the Committee on Government Reform and Oversight report on H.R. 1553 (now P.L. 105-25), that extended the authorization of the Review Board until September 30, 1998.

At the January 22 closed meeting, the Board processed for public release approximately 3,600 FBI records, 1,000 CIA records, and 350 records from other agencies. The nearly 5,000 records processed by the Board is its highest total for a single meeting. In addition, the Review Board recently released approximately 600 pages of military records regarding U.S. policy toward Cuba from 1962-63. Additional military records related to U.S. policy toward Cuba in the early 1960's will be ready for public release in the coming months.

The 710 records that the CIA made available for Review Board action at the January meeting is the highest monthly number of records released to date. In addition, a total of 289 HSCA documents with CIA equities were opened in full pursuant to discussions with the CIA. Although the Review Board believes that the pace must continue to increase, the momentum is unquestionably in the right direction. The CIA also has advised us that it has added additional reviewers and indexers, which we believe should help it process more records during the upcoming months. We now are conducting weekly meetings with CIA for the purpose of evaluating the pace of the review process. The CIA also has increased its progress in responding to our requests for additional information and records. The requests that we had identified as priorities have now been answered either in whole or in part and the CIA has shown an increased

willingness to respond to follow-up requests more quickly. While there are a significant number of requests outstanding, the increased responsiveness of the CIA bodes well for the completion of these requests in a timely manner.

Since our December report, the Board's FBI team has reviewed an additional 20,000 pages of records from the FBI's HSCA files. Included in these files are the names of individuals who have a prominent role in the history surrounding the assassination of President Kennedy. Although this page count is higher than last month, we have advised the FBI that the volume must return to earlier levels to ensure that the review is completed in a timely manner.

As I reported in my January 16, 1998 letter to you, all of the agencies and offices to which you addressed letters in December have now contacted us and pledged to complete their work in a timely manner. In particular, recent meetings and communications with the Internal Revenue Service have been fruitful and provide reason to believe that the IRS will fulfill its obligations under the law.

I would also like to take this opportunity to provide you with an update on the Board's federal compliance program. The State Department has submitted a draft final compliance statement and we expect that its obligations under the JFK Act will be completed and appropriately documented by early March. The Joints Chiefs of Staff has submitted its final compliance statement, and the Board has agreed that its compliance statement is complete. The Social Security Administration also has submitted its final compliance statement and has now received notification that its obligations under the law are fulfilled. We continue to work with the other federal agencies that have obligations under the JFK Act and the compliance program is proving to be an effective mechanism to document their progress.

Again, thank you for your continuing interest in the work of the Review Board and the support that you have provided in working with various federal agencies. Please do not hesitate to have a member of your staff contact me if you have any comments or questions. I can be reached at 724-0088, ext 226.

Sincerely,

T. Jeremy Gunn
Executive Director

f.l.

T. Jeremy Gunn
Executive Director and General Counsel
Assassination Records Review Board

Prepared Statement for
Senate Governmental Affairs Committee
Hearing on S. 712

March 25, 1998

Mr. Chairman and Members of the Committee -- I appreciate the opportunity to testify on S. 712 from the perspective of a person who has labored in the declassification trenches for the past three and one-half years. Although I serve as the Executive Director of the Assassination Records Review Board, I wish to emphasize that I am testifying here today not as a spokesman for the Review Board, but as an individual who has been involved in day-to-day interactions with numerous Federal agencies on issues related to declassification. The Review Board members, who were appointed by the President and confirmed by the Senate, are Judge John R. Tunheim, Professor Henry F. Graff, Dean Kermit L. Hall, Dr. William L. Joyce, and Professor Anna Kasten Nelson. The Board members have provided the American people unparalleled access to information that has been held secret for more than a third of a century. The Review Board's official positions on matters related to declassification will be set forth in its Final Report to Congress and the President later this year.

I applaud the efforts of Senator Moynihan, Senator Helms, and this Committee to reduce government secrecy. One of the tragic consequences of government secrecy has been the widely held belief that the government has known much more about the assassination than it has been willing to reveal to the public. Many of the assassination records that we have seen could have been opened to the public years ago without any harm to the national security. The efforts of this Committee could go a long way to help alleviate the suspicion of government -- some of it being justifiable suspicion -- that has festered since the assassination of President Kennedy.

Because my experience comes principally from the field of declassification, I will focus my remarks on that area rather than discuss the very important issue of initial classification.

I. Background

Although the word "unique" is over-used, it can fairly be applied to the work and accomplishments of the Review Board. The Board was created by Congress in an effort to release the government's still-secret files related to the assassination of President Kennedy. In accordance with the declassification standards articulated in Section 6 of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107, Pub.L. 102-526 (as amended) ("JFK Act"), the Review Board

has opened up previously classified records from numerous agencies and departments, including the CIA, NSA, FBI, the Departments of State, Defense, Treasury, and Justice, as well as the Military Services, Secret Service, Senate and House Committees, and the National Security Council.

Under the JFK Act, agencies are required either to open assassination records in full, or to present to the Review Board proposed redactions and evidence in support of their proposed redactions. After receiving the agencies' evidence, the Review Board deliberates and makes "formal determinations" as to whether the records should be opened. The Board's determinations have been overwhelmingly in favor of opening records. If an agency disagrees with the formal determination of the Review Board, its sole recourse is to appeal the Board's decisions to the President. Thus far, only one agency, the FBI, has appealed Board decisions. (The appeals ultimately involved approximately 90 records and four different issues.) After extensive briefings had been submitted to the President -- with each side arguing why the records should or should not be released -- the FBI ultimately withdrew its appeals and negotiated with the Review Board for resolution of the issues. Without exception, every formal determination ultimately made by the Review Board has prevailed and records have been released in accordance with Board decisions. It has now been almost two years since an agency has appealed a decision to the President. Thus, the Board's work has been a success. Although I do not consider the JFK Act to be the precise model for future government-wide declassification efforts, it nevertheless has provided valuable lessons that may be of use to you as you consider S. 712.

II. The "Four Noble Truths" of Declassification

In my opinion, any legislation that would attempt to have a significant impact on the culture of secrecy must do more than articulate worthy goals and establish bureaucratic entities to reiterate those goals. Effective legislation must address the significant institutional impediments to declassification. Any conscientious effort to change the secrecy system should take into account what I will call the "Four Noble Truths" of declassification:

first, an independent entity, not the classifying agency, should be the final decision maker on declassification;

second, the independent declassification entity should be informed, committed, and skeptical;

third, in order for declassification to be successful, there must be internal institutional incentives to declassify information; and

fourth, the key to successful declassification is *not* the articulation of the

List of Exhibits
Statement of T. Jeremy Gunn

Exhibit A.
Cable to the Mexico City Station from CIA Headquarters, November 27, 1963.

This document was released in full after a Board vote in 1995. The second line of typed text includes the crypts (or cryptonyms) "RYBAT" and "GPFLOOR." These crypts appear in the "slug line" and they are routing and sensitivity indicators. "GPFLOOR" is the crypt that refers to Lee Harvey Oswald. This same crypt appears in the first line of the second paragraph of text. CIA originally advised that GPFLOOR could not be released in the slug line although it could be released in the text of the cable.

Exhibit B.
Letter to the Legal Attaché in Paris from the Director of the FBI, October 12, 1960. Subject: Lee Harvey Oswald - Internal Security.

This document was one of several records exempted by the FBI because it contained foreign government information. The stamps on the page suggest that the document was reviewed in 1977 and stamped exempt from declassification. This document was re-reviewed in 1992 and severely redacted. The Review Board, with the assistance of the Department of State, approached the Swiss Government and requested that it consent to the release of the information. In December 1995, the document was released in full after a Board vote and with the concurrence of the Swiss Government.

Exhibit C.
Memorandum to the Secretary of Defense from the Joint Chiefs of Staff, January 31, 1964. Subject: A Contingency Plan for a Coup in Cuba.

The Review Board located several Top Secret documents related to military contingency planning for a coup in Cuba. This exhibit contains one page from a 58-page document formerly classified Top Secret--Sensitive. The document was excluded from automatic declassification and was unavailable to the public in any form. It was systematically reviewed in October 1989 and the classification was continued. This document and many similar documents were opened in full at a declassification session in July 1997 after review by representatives of the Joint Chiefs of Staff, the CIA, the National Security Council, and the Office of the Secretary of Defense.

Exhibit D.
(a) *Vietnam January-August 1963*, Foreign Relations of the United States, Vol. 3. pp. 265-270.

(b) Memorandum for the Record of the Eighth Secretary of Defense Conference on Vietnam, May 6, 1963, Honolulu, Hawaii.

In May 1963, Secretary of Defense Robert McNamara met with military advisers in the eighth of a series of conferences on Vietnam in Honolulu, Hawaii. Part (a) of this exhibit includes all of the material that had been publicly released on the conference prior to Review Board action (a 6-page summary published in *Foreign Relations of the United States)* and part (b) includes the title pages of the full 213-page *Record [of the] Eighth Secretary of Defense Conference* from the Joint Chiefs of Staff Official File that has now been opened in full. Prior to Review Board action, the memorandum had been excluded from automatic regrading and declassification and could presumably have remained classified forever. A stamp on page 1 discloses that the document was systematically reviewed by JCS in May 1989, and the classification of Top Secret was continued. The document was opened in full at an ARRB declassification session in July 1997.

Exhibit E.
Monthly Operational Report 1-30 September from the Chief of Station, Mexico City to Chief KURIOT, October 18, 1963.

The CIA typically is reluctant to release information regarding technical surveillance. This document is a CIA monthly operational report for Mexico City for September 1963, a period that includes Lee Harvey Oswald's arrival in the Mexican capital. The attached form discloses that this document was reviewed in 1993 and postponed in its entirety. It was opened in full in 1995 after a Board vote.

Exhibit F.
NSA SIGINT product report, November 26, 1963.

The Review Board has had some success in releasing NSA records. This document discloses NSA's intercepts of communications related to Cuban military alerts after the assassination of President John F. Kennedy. It was originally unavailable to the public in any form and was exempt from automatic declassification. This document was released with sanitizations by Board vote.

Exhibit G.
Memorandum to McGeorge Bundy from Gordon Chase, June 15, 1964. Subject: Assassination of Castro.

This document from the files of the National Security Council was originally classified "Secret" and was exempted from declassification in 1976. The NSC agreed to release it in full after discussions with the Review Board in 1998.

categories of information exempt from release (although the clear articulation of such categories is important), but the allocation of the burden of proof to the party that seeks to exempt information from release.

Because these four points are inextricably interconnected, I will discuss them in reference to our work and to a series of documents that are attached as exhibits to this testimony.

During the past four years, I have spent hundreds of hours talking with officials from more than a dozen agencies and reviewing memoranda that argue against the release of certain types of classified information. It has been my general impression that the officials making such arguments are intelligent, conscientious, competent, and hardworking. (I also have had the general impression that they have sought to be cooperative with the Review Board and that they have made good-faith efforts to comply with the JFK Act.) One nevertheless cannot help but observe a deep-seated, institutional reluctance to release information -- particularly on the part of those institutions that were created for the purposes of collecting secret information and preserving secrets.

In order to facilitate declassification, S. 712 requires agencies to articulate their reasons for initial classifications and for exemptions from declassification. For example, Section 4(c)(2)(A) would require the agency to "provide in writing a detailed justification for [an initial classification] decision." Similarly, with regard to the 30-year review, agencies would "certi[fy] to the President at the end of such 30-year period that continued protection of the information from unauthorized disclosure is essential to the national security of the United States . . . ." (Sect. 4(d)(2)). The talented officials who are hired by the agencies will be able to provide such explanations and such justifications. The issue from my perspective is not whether agencies are able to articulate such justifications, but to what extent their justifications can withstand scrutiny. Let me provide some examples where initial justifications for withholding information did not withstand scrutiny.

Illustration 1. See Exhibit A. The first illustration is a CIA cable dated November 27, 1963, that has now been released in full. As you can see, the second line of typed text includes the crypts (or cryptonyms) "RYBAT" and "GPFLOOR." These crypts appear in what is called the "slug line" and they are routing and sensitivity indicators. "GPFLOOR" is the crypt that refers to Lee Harvey Oswald. This same crypt appears in the first line of the second paragraph of text. The CIA originally advised that GPFLOOR could not be released in the slug line although it could be released in the text of the cable. I had several discussions with agency officials as they tried to explain why GPFLOOR could be released in one place but not in the other. I could not understand their explanations. At that time I was new to the work and I did not know whether I was simply not bright enough or experienced enough to understand the explanation being offered. I again raised the question in a later meeting with several agency officials that

covered other topics. Finally, an official said: "I don't see why it can't be released. This is an issue for COMMO [COMMO is the Communications Office.] Someone ask COMMO whether it cares." COMMO was subsequently asked -- and it had no objection to the release. I now infer that protecting crypts in slug lines was an ingrained agency habit rather than a considered judgment. The disclosure came only after incessant questioning by a skeptical interlocutor.

Illustration 2. During the course of our review of records from the Secret Service, the Board identified for the Secret Service a record it intended to open in full and the agency objected. The Board then advised that a copy of the record had actually been published in full in 1964 as an exhibit to the Warren Commission Report. The agency continued to object, arguing that even a subsequent release of an open document would again disclose matters that should be kept secret. The Board subsequently voted to open the record.

Illustration 3. In several FBI documents that were subject to appeal to the President, the FBI argued that certain types of its electronic surveillance had not previously been disclosed. In our opposing memoranda, we showed that Director J. Edgar Hoover, in open testimony to Congress, had effectively disclosed the existence of the electronic surveillance. Those records are now open.

Illustration 4. See Exhibit B. The Review Board was presented with a heavily redacted but provocative document pertaining to an FBI "Internal Security" inquiry into Lee Harvey Oswald in October 1960. The FBI declined to release the information, arguing that it contained the equities of a foreign government and that the government had refused to release the information. The Review Board, with the assistance of the Department of State, thereupon approached the Swiss Government and requested that it consent to the release of information about the assistance that the Swiss Federal Police provided to the FBI to track down Oswald. The Swiss government agreed and the record is now open in full.

Illustration 5. See Exhibit C. The Review Board located several Top Secret documents related to military contingency planning for a coup in Cuba. Exhibit C contains one page from a 58-page document from this group that had been "excluded from automatic downgrading and declassification." The Review Board staff arranged for a group of declassifiers from several military and other national-security entities to meet at the Review Board offices in a joint-declassification session. The 58 pages of this document, and many other records from this group, have gone from being completely closed to completely open.

Illustration 6. See Exhibit D. In May 1963, Secretary of Defense Robert McNamara met with military advisers in the eighth of a series of conferences on Vietnam. Exhibit D includes all of the material that had been publicly released on the conference prior to Review Board action (a 6-page summary published in *Foreign*

Relations of the United States, 1961-63 Vol. 3) and the title page of a 213-page *Record [of the] Eighth Secretary of Defense Conference* from the Joint Chiefs of Staff Official File that has now been opened in full. Prior to Review Board action, the memorandum had been excluded from automatic downgrading and declassification and could presumably have remained classified forever. A stamp on page 1 discloses that the document was systematically reviewed by JCS in May 1989 and the classification of Top Secret was continued. The document was opened in full at a declassification session in July 1997.

Illustration 7. See Exhibit E. Like the FBI, the CIA typically is reluctant to release information regarding technical surveillance. Exhibit E is a monthly operational report from Mexico City from September 1-30, 1963, a period that includes Oswald's arrival in the Mexican capital. In 1993, the document was postponed in its entirety. The Review Board voted to open the record in its entirety.

Illustration 8. See Exhibit F. The Review Board has also had some success in releasing NSA records. Exhibit F is dated November 26, 1963, and discloses NSA's intercepts of communications related to Cuban military alerts after the assassination. It was originally unavailable to the public in any form and was exempt from declassification. After Board action, the important information has been released.

Illustration 9. See Exhibit G. Exhibit G is a National Security Council document that pertains to an alleged plot to assassinate Castro. Although it was originally classified "Secret" and was deemed to be exempt from declassification, the NSC agreed to release it in full after discussions with the Board.

I trust that these examples show that agencies are initially inclined to protect information that can and should be released. But the examples also show that, with a little prodding by an independent entity, agencies can and will participate in a cooperative spirit to declassify secrets. Under the current regime, outside of the JFK Act, agencies have little internal or external incentive to take an energetic approach to declassifying records. Agencies do not send the message to agency personnel that a fast track to career advancement lies with the release of more information than is absolutely necessary. Agencies have the natural disinclination to release information that has been painstakingly acquired. Ultimately, secrecy becomes a habit and declassification is mired in lack of attention and inertia. There is, however, an important and encouraging message that comes out of the Board's experience: *once agencies come to the understanding that they must declassify records and that there is a presumption that records should be opened, the agencies will cooperate in good faith with the requirements established by Congress.*

III. The Mechanics of Declassification

Declassification involves more than appropriate standards for the release of information. It also calls for the establishment of effective mechanisms to move records through the bureaucracy. Once again, the experience of the Review Board provides valuable lessons that should be of use to this Committee in considering legislation. I would like to draw attention to four important points involving the mechanics of declassification.

First, the "referral process" is one of the most significant, government-wide bottlenecks to the declassification of records. Before an agency can release information in its records that was obtained from another agency, it must refer the record to the agency from which it derived that information. Although this procedure is a sensible arrangement that promotes the valuable goal of sharing information among agencies, it becomes a costly and time-consuming obstacle to declassification. Very frequently, records become trapped in the morass of the referral process.

The Review Board developed essentially three procedures to help expedite the referral process: (a) establishing joint-declassification sessions where several agencies convened at the Review Board offices (or sometimes at another site) and declassified records; (b) hand-carrying records from one agency to another and having them declassified on-site; and (c) giving agencies notice that unless records were reviewed by a certain date, the Board would simply vote to open the records without receiving the benefit of their input. In my opinion, any legislation designed to improve the declassification process must take into account this referral bottleneck by giving to the independent, supervising agency, the authority to set enforceable timetables.

The ability to bring agencies together, such as in the joint-declassification sessions, has important beneficial effects that extend beyond expediting the referral process. In our experience, agencies tended to lose some of their institutional inhibitions as they sat at a table with each other and discussed records openly. Surprisingly, agencies typically *assumed* that another agency would not release information when the other agency was in fact willing to do so. Frequently, it is the suspicion that one agency does not want to release information that inhibits other agencies from releasing information. Like the COMMO example from Illustration 1 above, the perception of unwillingness to open records is sometimes greater than the need to keep records closed.

Second, the Review Board profitted from the power, authorized by Congress, to "direct a Government office to make available to the Review Board . . . additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities . . . ." JFK Act, § 7(j)(1)(C)(ii). This power enabled the Review Board to obtain information about the basis for classifications, the existence of records relevant to completing its mandate,

and the circumstances surrounding the creation of records. It is important that an agency with supervisory responsibility over declassification have the authority to obtain the information it needs to accomplish its work.

Third, as with the referral process, a frequent bottleneck in the declassification process is the final transfer of records from the declassifying agency to the National Archives. An independent entity responsible for supervising this process should have the authority and responsibility of guaranteeing that once the declassification process is complete, the final step of making records available to the public is taken.

Fourth, although the start-up process is very time-consuming, it is a necessary prelude to more efficient and productive work. The start-up time for the Review Board, as I understand is also the case for Interagency Security Classification Appeals Panel (ISCAP), required education not only of the Board and staff, but also of the agencies. It is important that any future planning of an endeavor of this nature take into account the initial costs and, importantly, take advantages of the lessons learned by the Review Board. The initial cost can be recuperated in the long run.

When an independent agency, such as the Review Board, has the authority to set the agenda (by establishing timetables), sponsor joint declassification sessions, require the production of evidence, and ensure the prompt transfer of declassified records from the agencies to the National Archives, declassification can be a success. I strongly urge this Committee to take advantage of the momentum created by the JFK Act and by ISCAP, and create an authority that will be able to bring independence, consistency, and energy to the process of making the government more open and accountable to the people who have paid for it.

IV. Recommendations for Making S. 712 More Effective

With regard to S. 712, I wish to summarize the following recommendations that have been offered either explicitly or implicitly in the testimony above:

First, the entity responsible for overseeing the declassification process (which, in the current version of the S. 712, is the National Declassification Center), must be genuinely independent of the agencies whose records it oversees. The Center should be staffed by persons who are both sensitive to the genuine secrets of the agencies, but who also are skeptical and demanding of proof.

Second, the independent entity should have the power to set reasonable timetables by which an agency must complete the declassification review (or referral review). The independent entity should be empowered to release information on its own authority if agencies do not comply with reasonable timetables. The independent agency should additionally be empowered to obtain information from the agencies that

is essential for completing its work.

Third, the legislation should incorporate a statutory provision that, at a certain point in time, records will presumptively be opened unless the agencies are able to articulate specific and persuasive reasons for continued redactions. Although it would be sensible to provide agencies with the benefit of the doubt regarding declassification for an initial period (*e.g.*, between 10 and 25 years), once this period has passed the presumption should shift decisively in favor of releasing the information.

Fourth, agencies should be required to do more than provide mere "detailed justifications" (*see, e.g.*, S. 712 § 4(c)(2)(A)) for classifying and refusing to declassify records. The written explanations must be *more than* "justifications," they must be able to convince a skeptical reader who has sufficient information to evaluate the merits of the writing.

Fifth, it would be highly advisable to provide the declassification entity (the National Declassification Center), with the authority to make binding requests to agencies to search out records that may have been misplaced or misfiled.

Finally, there is one additional recommendation that I would make that presumably goes beyond the scope of today's hearing and so I will raise it only in passing. I believe it would be advisable for future Executive Orders to break down the "sources and methods" exemption, inasmuch as it is used too casually and it covers a multitude of very distinct issues. To the extent that the Committee is interested, I would be willing to submit additional comments at a later point to develop this issue.

* * * *

I would like once again to thank the Committee for taking seriously the right of the American people to better understand how their government functions. I would be pleased to answer your questions.

STATEMENT OF STEVEN GARFINKEL
DIRECTOR, INFORMATION SECURITY OVERSIGHT OFFICE*
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

before the

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

March 25, 1998

Mr. Chairman and Members of the Committee:

I am very pleased to appear before you today to report on our progress in implementing the recently established system for classifying, safeguarding, and declassifying national security information. On April 17, 1995, the President issued Executive Order 12958, entitled "Classified National Security Information." This Order took effect on October 14, 1995, only two and one-half years ago. While still in its early stages of implementation, the Order clearly attempts to strike an appropriate balance.

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*The Information Security Oversight Office, or ISOO, is responsible for overseeing Government-wide implementation of the security programs under Executive Order 12958, "Classified National Security Information," and Executive Order 12829, "National Industrial Security Program." ISOO is also responsible for reporting annually to the President on the status of those programs. Created in 1978, ISOO became a component of the National Archives and Records Administration in November 1995. In addition to reporting to the Archivist of the United States, the Director of ISOO receives policy guidance from the National Security Council.

Among its functions, ISOO: (1) develops implementing directives and instructions; (2) maintains liaison with all agencies that create or handle classified information; (3) inspects agency programs and reviews their classified records; (4) receives and responds to public complaints, appeals and suggestions; (5) collects and reports to the President and Congress relevant statistical data about the security classification program, including data about its costs; (6) serves as a spokesperson for information about the security classification program; (7) provides program and administrative support for the Interagency Security Classification Appeals Panel and the Information Security Policy Advisory Council; and (8) recommends policy changes to the President through the National Security Council.

On the one hand, it seeks to reduce the permitted level of secrecy within our Government, and to make available to the American people hundreds of millions of pages of historically valuable documents that no longer require protection in the interest of national security. On the other hand, the Order enables us to safeguard the information that we must in order to protect our nation and our citizens.

Already, this new system has achieved some rather remarkable results:

- In the last two years, the agencies of the executive branch have declassified more than 400 million pages of permanently valuable government records.

- Of the more than 650 million pages that the executive branch has declassified since 1980, more than 70% of that total took place in the past three years.

- Agencies that never previously contemplated large-scale declassification, like the Central Intelligence Agency, the National Security Agency, and the National Reconnaissance Office, now have in place productive declassification units.

- The Interagency Security Classification Appeals Panel, a new six member panel representing the Secretaries of State and Defense, the Attorney General, the Director of Central Intelligence, the Archivist of the United States and the Assistant to the President for National Security Affairs, has declassified in their entirety more

than 70% of the documents that have come before it on appeal from agency decisions to keep those same documents classified.

- Original classification decisions, the actions most akin to new secrets, have decreased to historic lows.

- Anecdotally, those of us who are exposed to a wide variety of classified information are noting more and more situations in which information that would have been routinely classified in the past is now routinely unclassified, without any increased threat to our national security.

Mr. Chairman and Members of the Committee, I can state with total confidence that the United States Government stands far in the forefront among nations in the manner, timing and extent to which it makes available to its citizens and the general public its records of governance, including its formerly classified records. In conversation after conversation that I have had over the years with foreign government officials, and with foreign students, researchers, and journalists, one visitor after another has expressed great admiration for the degree of openness offered by our freedom of information laws, and our security classification system, with its limitations on classification and its emphasis on declassifying information as soon as it is prudent to do so.

These indicators of progress do not mean that we have all the answers about our security classification system or that there aren't tremendous hurdles to clear. For example, the implementation of the new system has been uneven among the major classifying agencies, and a few are only now just getting started; the costs of implementing the system at some agencies are higher than we anticipated; and resource limitations are having a clear impact on agency compliance and oversight. To be sure, the standards and goals established within the new Executive Order are unparalleled. We are not yet certain that every agency, or perhaps any agency, can achieve them. However, only if the targets are difficult can reaching them be noteworthy.

I recognize that the focus of today's hearing is the legislation before the Committee. I will try to answer any questions you may have concerning the similarities and differences between the security classification system that currently exists and the system that S. 712, as currently drafted, would impose. The Administration has serious objections to certain provisions of S. 712, particularly as they could impinge upon the President's authority and flexibility to manage the classification and declassification programs. Legislating in this area can be perilous, given the great deference traditionally given to the President in the areas of national defense and foreign affairs.

However, the Administration is prepared to work with the Congress to address these concerns and to establish an effective National Declassification Center. The Administration will identify the revisions that would be required to enable the Administration to support S. 712.

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F.A.S.

FEDERATION OF AMERICAN SCIENTISTS
307 Massachusetts Avenue, N.E.
Washington, D.C. 20002
Phone (202) 546-3300
E-Mail fas@fas.org
Web http://www.fas.org/
Facsimile (202) 675-1010

CIA HAS NO OBJECTION TO
DECLASSIFICATION AND/OR
RELEASE OF CIA INFORMATION
IN THIS DOCUMENT

Statement
of
Steven Aftergood
Director, Project on Government Secrecy
Federation of American Scientists

before the
Committee on Governmental Affairs
United States Senate

Hearing on
S. 712, The Government Secrecy Act

March 25, 1998

Introduction

Mr. Chairman, I appreciate the opportunity to address your Committee on the subject of government secrecy.

I believe that this subject is as important as any on the Committee's agenda because it goes directly to the heart of our political system. Government controls on information define the limits of American democracy. Limits on information mean limits on informed debate, limits on the ability of citizens to meaningfully communicate with their representatives, and on their ability to hold elected officials accountable.

At the same time, it is self-evident that some degree of secrecy is necessary in certain matters of national security, including the protection of advanced military technologies and the conduct of diplomatic and intelligence activities.

A sound government information policy is therefore one that strikes a responsible and appropriate **balance** between the imperatives of open, accountable government and the requirements of national security secrecy.

Such a balance is precisely what has been lacking throughout the modern era of cold war secrecy, leaving us today with a grotesquely distended secrecy system that improperly withholds unimaginable quantities of records from public access while often failing to protect genuine secrets.

My hope is that Congress and this Committee will take steps towards a new balance that corrects the failings of the past, and will enact a government information policy that better serves the national interest.

In the following remarks, I will first present several assertions about secrecy policy by way of background, and I will then draw some specific conclusions concerning the Government Secrecy Act.

BACKGROUND

I would like to emphasize several points that I believe should form the foundation for congressional deliberation on the future of the government secrecy system.

1. Most Americans believe that government secrecy is excessive.

One might well suppose that public concern about official secrecy is limited to those who are most immediately affected by it, such as journalists and historians, as well as a small cadre of advocates and activists. But that is not the case.

Public surveys conducted for the Department of Defense in 1994 and 1996 consistently found that a majority (55%) of Americans believe that "the government

protects too many documents by classifying them as SECRET and TOP SECRET."[1]

In other words, concern about excessive government secrecy is not simply the province of "special interest" groups; it is shared throughout the general public. Reducing government secrecy truly is a matter of "public interest."

Much of this public concern is latent and diffuse, but it crystallizes time and again around specific issues-- the JFK assassination, POW/MIAs in Southeast Asia, UFOs, Nazi war crimes, human rights violations in Latin America, and so forth.

2. Excessive classification is a fact. But independent review can overcome it.

Even if the majority of Americans believe that government secrecy is excessive, they could conceivably be mistaken. But they are not mistaken. It is demonstrably true that government agencies classify too much and fail to declassify information that no longer warrants protection.

This problem is illustrated with particular clarity by the fact that agency refusals to declassify records are frequently overturned-- within the executive branch itself-- by the Interagency Security Classification Appeals Panel (ISCAP), which receives appeals from members of the public for documents that agencies have refused to declassify

Deputy Assistant Attorney General Roslyn A. Mazer, who was appointed by President Clinton to chair the ISCAP, reported recently on the latest activities of her Panel, which includes representatives of the Departments of Justice, State, Defense, CIA, NSC and the National Archives:

> We have taken final votes on appeals for declassification of more than 70 documents on a wide variety of subjects. Of these, we have voted to declassify more than 70 percent of them in their entirety, while declassifying significant segments of most of the remainder. This is significant in my view because, *in each instance, we are voting to overturn an agency's decision reached at its highest level of appeal....*[2]

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[1]Not inconsistently, a majority of those surveyed also favor "a high level of secrecy" for technology with military applications. *"Public Attitudes Towards Security and Counter-Espionage Matters in 1994 and 1996"* by Tom W. Smith, National Opinion Research Center, prepared for the Department of Defense Personnel Security Research Center, November 1996. <http://www.fas.org/sgp/othergov/perssur2.html>.

[2]Remarks by Roslyn A. Mazer, Chair, Interagency Security Classification Appeals Panel, before the DoD Historical Records Declassification Advisory Panel, March 6, 1998, emphasis added. <http://www.fas.org/sgp/advisory/iscap0398.html>.

The fact that agency classification policies often cannot withstand scrutiny even within the executive branch points to the root of the problem. The problem is not that classifiers are dishonest or acting in bad faith; in general, they are doing a thankless job the best they can.

The problem rather is the natural and often unconscious tendency of all bureaucracies to limit the flow of information to outsiders. As Sen. Moynihan observed, "The problem is that organizations within a culture of secrecy will opt for classifying as much as possible, and for as long as possible."[3] If they go unchecked, agencies will hoard information beyond all reason, which is how we got to where we are today.

Fortunately, Ms. Mazer's remarks also reveal a solution to this unavoidable problem, and that is <u>independent review</u> of agency classification decisions. The record of the ISCAP demonstrates that unnecessary classification can be reduced or eliminated when contested classification actions are reviewed by "outsiders" who share the agency's commitment to national security, but who do not share its Weberian tendencies toward bureaucratic secrecy.

Only such independent reviewers are capable of separating the national security wheat from the bureaucratic chaff. I believe that this is a crucial principle which should inform Congressional action in this area.

3. Congress is free to legislate on secrecy policy.

The Justice Department "strongly opposes a statutory framework for the safeguarding of national security information," arguing in effect not only that the President has the authority to set and implement classification policies, but that he has *exclusive* authority to do so.[4]

The Committee should recognize that this is a natural and predictable response from the executive branch, which seeks to preserve its prerogatives and to maximize its own freedom of action. But I believe the Justice Department overstates its case.

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[3]Report of the Commission on Protecting and Reducing Government Secrecy ("Commission Report"), 1997, Chairman's Foreword, page xxxix. Available in searchable "html" format at <http://www.fas.org/sgp/library/moynihan/index.html>.

[4]"Subjecting the protection of national security information to statutorily-required standards or procedures would raise constitutional concerns to the extent that it would limit the President's ability to discharge a core constitutional responsibility as he sees fit." Memorandum from the Deputy Attorney General on the Government Secrecy Act of 1997, September 15, 1997.

There is no question that Congress has the right and, I would say, the obligation to legislate in this area, particularly since the executive branch has failed to manage the secrecy system in a way that best serves the national interest. As Harold Relyea of the Congressional Research Service has pointed out:

> Pursuant to its constitutional authority "To make Rules for the Government and Regulation of the land and naval forces" (Article I, Section 8, clause 14), as well as the "necessary and proper" clause (Article I, Section 8, clause 18), Congress has long established rules, regulations, and procedures of general effect for the government and the armed services.... These clauses would appear to empower Congress with authority to legislate policy and procedure comparable to that prescribed by presidential executive order to effect security classification.[5]

The right of Congress to enact secrecy-related legislation has also been clearly recognized by the Supreme Court. Prior to the 1974 amendments to the Freedom of Information Act, the Court held in EPA v. Mink, 410 U.S. 73 (1973) that Congress had not intended for the courts to examine the propriety of classification decisions or procedures. But, as Kate Martin of the Center for National Security Studies has noted, the Court also found that:

> Congress could certainly have provided that the Executive Branch adopt new procedures or it could have established its own procedures-- subject only to whatever limitations the Executive privilege may be held to impose upon such congressional ordering.[6]

And of course Congress has enacted legislation dictating classification policy on numerous occasions, including the statutory classification framework of the Atomic Energy Act and the National Security Act, in which Congress (not the President) assigned the Director of Central Intelligence the responsibility for protecting intelligence sources and methods from unauthorized disclosure.

Furthermore, Congress has also successfully enacted statutes requiring

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[5]Statement by Harold C. Relyea, Congressional Research Service, before the House Permanent Select Committee on Intelligence hearing on "A Statutory Basis for Classifying Information," March 16, 1994, page 48ff.

[6]410 U.S. at 83 (1973). See Testimony of Kate Martin, Director, Center for National Security Studies, before the House Permanent Select Committee on Intelligence hearing on "A Statutory Basis for Classifying Information," March 16, 1994, page 66ff, for further elaboration of related Court rulings, and her conclusion that "the only possible constitutional limitation would be that the Congress could not order disclosure of advice given to the President that would constitute a state secret."

disclosure of certain classified information, including the JFK Assassination Records Collection Act (P.L. 102-526) and legislation concerning the State Department's *Foreign Relations of the United States* series (P.L. 102-138). In addition, Congress has granted itself the authority to declassify any information in its possession.[7]

Today, several more bills mandating declassification are pending before Congress, including: S. 1220, "The Human Rights Information Act"[8]; S. 1232, a bill to declassify the private journal of Dr. Glenn Seaborg[9]; and S. 1379, "The Nazi War Crimes Disclosure Act."[10] Each of these bills was introduced because the public had no choice but to turn to Congress in order to correct the failings of executive branch classification and declassification policies. If the Justice Department position were to be taken at face value, all of these bills-- as well as the Freedom of Information Act itself-- would be unconstitutional, and executive branch officials would have completely unchecked power to withhold whatever information they chose.

In short, while the executive branch is entitled to *advise* Congress to stay out of national security information policy, Congress must be guided by the larger national interest and has every right to reject that advice, as it has in the past.

4. The secrecy system is not as bad as it could be.

A statutory secrecy system should be conceived as a means, not an end in itself. In considering legislative changes to secrecy policy, Congress should aim to fix what needs fixing, but also to preserve what warrants preserving.

In particular, the Committee should recognize the changes that were inaugurated with President Clinton's executive order 12958, and which have already produced some impressive results.

Most important, from my point of view, is the order's automatic declassification provision (section 3.4) which requires the declassification of most historically valuable 25 year old documents by April 2000. This provision has generated an unprecedented surge in declassification, reported at nearly 200 million pages in FY 1996 alone.[11]

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[7]See Senate Resolution 400, section 8.

[8]<http://www.fas.org/sgp/congress/s1220.html>.

[9]<http://www.fas.org/sgp/congress/s1232.html>.

[10]<http://www.fas.org/sgp/congress/s1379.html>.

[11]1996 ISOO Report to the President <http://www.fas.org/sgp/isoo/isoo96.html>.

So Congress need not and should not consider classification policy in a vacuum. It must start with the reality of classification policy as it is today and "first, do no harm." Legislative changes to the classification system should begin by affirming what is positive in current policy-- and then building on it.

THE GOVERNMENT SECRECY ACT OF 1997

The Government Secrecy Act contains a number of important provisions which are derived from the two-year investigation of the Commission on Protecting and Reducing Government Secrecy. The Act's two most positive innovations-- a "balancing test" and a National Declassification Center-- are also the ones that have elicited the strongest opposition from the executive branch. I will comment briefly on each of these, and suggest one other area for Committee consideration.

1. The balancing test and judicial review.

Section 4(c)(1) of the Act would require officials to weigh or "balance" the potential benefit from disclosure against the need for protection in making classification and declassification decisions, and further dictates that if there is significant doubt about the need to classify the information, it shall not be classified.

From the perspective of a non-governmental consumer of government information, this is the Act's single most important provision.

In the abstract, the idea of "balancing" is unexceptionable and is almost built into the practice of classification. Executive order 12958 includes a discretionary balancing test for declassification (sect. 3.2b) as well as a "significant doubt" standard (sect. 1.2b) for classification. (Interestingly, the CIA promulgated a balancing test during the Carter Administration which remains in effect today [32 C.F.R. 1902.13(c)].)

This provision of the Act has drawn agency opposition not because of its balancing requirement *per se*, but because it would allow judicial review of agency balancing decisions under the Freedom of Information Act. The idea that courts would presume to "second guess" agency classification decisions is profoundly unwelcome to classifiers, who warn of disastrous consequences if their judgment is questioned.

This warning is self-serving and needs to be taken with large grains of salt. Similar concerns contributed to President Ford's decision to veto the 1974 amendments to the Freedom of Information Act, which allowed judges to determine whether information had been "properly" classified.[12] Fortunately, Congress overrode that veto and it turned out that the opponents' fears were not realized.

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[12]See President Ford's veto message at 120 Congressional Record H36243-4.

To the contrary, judicial review has been a potent factor in making the FOIA as useful a tool of democracy as it is. Indeed, it has been persuasively argued that the courts are not *sufficiently* diligent in reviewing agency classification decisions.[13]

The CIA has warned of "costly legal challenges that risk second-guessing of DCI/CIA judgments." This is a considerable exaggeration since in practice, no judge would reject a sworn affidavit from the DCI that certain information must be withheld. But at the same time, CIA classification judgments are *in need of* the checks and balances that judicial review would provide, particularly when it comes to the invocation of "sources and methods." Thus, the Secrecy Commission last year found that:

> the sources and methods rationale has become a vehicle for agencies to automatically keep information secret without engaging in the type of harm analysis required by executive orders as a prerequisite to keeping other kinds of information secret. The statutory requirement that sources and methods be protected thus appears at times to have been applied *not in a thoughtful way but almost by rote.*[14]

Federal court judges will never reject a "thoughtful" or even a merely plausible argument about the need to protect intelligence sources and methods. But the possibility of judicial review will serve to discourage indefensible "rote" classification.

Dire warnings of the consequences of judicial review of classification have not been borne out by the last 24 years of judicial review under the FOIA, and there is no reason to believe that courts would suddenly become reckless now when confronted with a balancing test.

I would add that any suggestions of a "flood" of lawsuits resulting from this provision are certain to be exaggerated. For the typical FOIA requester, there are huge "barriers to entry" to the judicial system. Legal representation is absurdly expensive, and *pro bono* assistance is generally available only in cases of considerable national importance or when victory is all but assured. In the last twenty years I must have filed hundreds of FOIA requests, but have brought suit under the FOIA only once.

The absence of effective "checks and balances" on executive branch classification actions has helped to produce today's bloated and highly arbitrary classification system. A balancing test that is subject to judicial review is the most

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[13]"National Security Information Disclosure Under the FOIA: The Need for Effective Judicial Enforcement," Boston College Law Review **25**: 611-643 (1984).

[14]Commission Report, Chapter III, page 70, emphasis added.

appropriate solution.[15]

2. A National Declassification Center

The proposed National Declassification Center is a response to the fragmented quality of declassification policy, and to the inadequacy of executive branch oversight, which the Secrecy Commission described as "the critical missing link."[16]

As currently conceived, however, the Center risks becoming an extraneous bureaucracy that agencies are free to utilize or not, as they wish, and that has little or no independent authority. In order to fulfill its intended purpose, the Center should be assigned specific tasks and authorities. For example:

- The Center could be assigned to perform independent review and approval of all agency declassification guides, so as to ensure their consistency and compliance with the provisions of the Act and the executive order.

- The Center could be assigned to perform or to coordinate the declassification of all documents involving multiple agency "equities," in order to optimize the efficiency of the declassification process.

Perhaps most important, the Center could undertake in an expanded form many of the oversight responsibilities now assigned to the Information Security Oversight Office (ISOO) and the Interagency Security Classification Appeals Panel (ISCAP).

ISOO, under Steven Garfinkel's leadership, has a profound understanding of the intricacies and shortcomings of secrecy policy and, in my opinion, has generally demonstrated good judgment about what is appropriate and achievable and what is not. But ISOO's staffing and resource levels are laughably low when compared to its nominal responsibilities. This disparity between resources and responsibilities sends a message throughout the executive branch that "we're not going to take secrecy oversight seriously."

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[15]The characteristic risks and benefits of information disclosure, and the mechanics of actually balancing them in practice are elucidated by Arvin S. Quist in *Security Classification of Information*, Vol. 2: Principles for Classification of Information, Martin Marietta Energy Systems, Inc., Oak Ridge, TN, Report No. K/CG-1077/V2, April 1993, Chaps. 5, 6. Of particular interest, Quist discusses how legal standards for weighing evidence that are already part of the judicial process-- such as "beyond a reasonable doubt," "clear and convincing evidence," and "preponderance of the evidence"-- could be used in balancing and in any subsequent review (pp. 61-69).

[16]Commission Report, Chapter 2, page 42.

The ISCAP, meanwhile, is doing a fine job, but on a tiny scale. And it is already operating at full capacity, although its tasks are expected to escalate sharply in coming years. As ISCAP Chair Roslyn Mazer has noted,

> When I consider what the next few years may hold for ISCAP, I fear that to a considerable extent we may become victims of our own successes-- and the caseloads that these successes may engender. Unfortunately, ISOO [which also supports the ISCAP] is a very small organization that faces ever-increasing demands on its resources from the dramatic changes in the classification and declassification systems now underway.... the onus on the ISCAP's staffing structure may very well prove too much to bear.[17]

Therefore, one straightforward "fix" that Congress might consider, at least in the interim, would be to significantly increase the stature and resources available to these two organizations so as to help fill in the "missing link" of executive branch oversight.

But whether Congress chooses to invigorate the existing oversight entities or to establish a new National Declassification Center, the goal should be one that has been clearly formulated by the Secrecy Commission:

> Oversight should be the responsibility of a strong and active organization, independent of the agencies that classify, perhaps modeled after agency inspector general offices. To be truly effective, such an organization should also possess the means to compel agency compliance with established policies.... Equally critical is that such a body have adequate resources, whether through a budget line item or the reallocation of resources from the principal classifying agencies.[18]

3. What About the "Other" Classification System?

If the Government Secrecy Act became law, we would not just have a statutory secrecy system-- we would have <u>two</u> statutory secrecy systems: one for national security information and one for atomic energy information, prescribed by the Atomic Energy Act of 1954. This may be too much of a good thing.

The existence of two parallel classification systems has proven to be a significant obstacle to efficiency in secrecy policy, as numerous records must undergo separate declassification reviews under each system.

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[17]Remarks by Roslyn Mazer, footnote 2 above.

[18]Commission Report, Chapter 2, page 44.

Even the high-level executive branch officials who are members of the Interagency Security Classification Appeals Panel have been flummoxed by the difficulties in coordinating the declassification of information controlled under the Atomic Energy Act. This is particularly absurd because, according to Ms. Mazer,

> information that is similar or identical to much of what we have seen designated as FRD [i.e. classified under the Atomic Energy Act] has been in the public domain for many years, often as a result of a prior Department of Energy declassification review. Moreover, *there appears to be no system in place to get this information declassified*, even though the Departments involved-- Energy, Defense, and State-- acknowledge that it is innocuous.[19]

The perpetuation of two distinct classification systems would represent a significant compromise of the Government Secrecy Act's goal of "a more stable and cost-effective set of policies and a more consistent application of rules and procedures."

Therefore, I would suggest that the Committee consider the feasibility of consolidating both classification systems into one.

CONCLUSION

Although the Cold War has officially been over for several years now, we still face the challenges of adapting the inherited structures of that era to the present day. Fixing the classification system is foremost among those challenges.

It is only natural that any significant changes to the status quo will be resisted by the bureaucratic systems that are now in place. But the Committee should have confidence in the traditional American mechanism of "checks and balances."

By installing new checks and balances into a classification system that has long been allowed to function unilaterally, Congress can induce prudent changes that will advance the national interest in open and accountable government, while more efficiently protecting genuine national security information.

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[19] Remarks by Roslyn Mazer, footnote 2 above, emphasis added.

H.R. 1553, 1-YEAR EXTENSION OF AUTHORIZATION OF THE ASSASSINATION RECORDS REVIEW BOARD

[Page: E876]

HON. DAN BURTON

in the House of Representatives

THURSDAY, MAY 8, 1997

- Mr. BURTON of Indiana. Mr. Speaker, today I am introducing H.R. 1553, which amends the President John F. Kennedy **Assassination Records** Collection Act of 1992--Public Law 102-526--to provide 1 additional year for the **Assassination Records Review Board** to complete its work. This legislation would extend the **Review Board** 's September 30, 1997, termination date under current law to September 30, 1998. H.R. 1553 authorizes $1.6 million in fiscal year 1998 for this purpose. I am pleased that the Honorable **Henry Waxman,** the ranking minority member on the Committee on Government Reform and Oversight, and the Honorable **Louis Stokes,** who sponsored the 1992 Act and who chaired the House Select Committee on **Assassinations** that was established in 1976, are original cosponsors of H.R. 1553.

- The purpose of the 1992 legislation was to publicly release **records** relating to the Kennedy **assassination** at the earliest possible date. The **Assassination Records Review Board** was set up to **review** and release the voluminous amounts of information in the Government's possession. The FBI, the Secret Service, the CIA, the Warren Commission, the Rockefeller Commission, the Church Committee in the Senate, and the House Select Committee on **Assassinations** have all held **assassination records** , and **records** have also been in the possession of certain State and local authorities as well as private citizens. When this legislation was considered, nearly 1 million pages of **records** compiled by official investigations of the **assassination** had not been made available to the public, some 30 years after the tragedy. Congress believed that simply making all relevant information available to the public was the best way to respond to the continuing high level of interest in the Kennedy **assassination** , and was preferable to undertaking a new congressional investigation. The 1992 law requires the **Review Board** to presume that documents relating to the **assassination** should be made public unless there is clear and convincing evidence to the contrary. I believe that the release of this information is important to ensure accountability in the Government and to clearly demonstrate to Americans that the Government has nothing to hide.

- As a result of the **Review Board** 's efforts, over 10,000 documents have been transferred to the national archives and **Records** Administration for inclusion in the JFK collection. At the end of 1996, that

collection totaled approximately 3.1 million pages and was used extensively by researchers from all over the United States. The **Review Board** was in the news last month when it voted to make public the Abraham Zapruder film of the Kennedy **assassination** .

- The President John F. Kennedy **Assassination Records** Collection Act of 1992 originally provided a 3-year timetable for the **Assassination Records Review Board** to complete its work. Unfortunately, there were lengthy delays in the appointment of **Board** members, and as a consequence the **Review Board** was scheduled to cease operations before it even began its work. As a result, in 1994 Congress restarted the clock by extending the 1992 law's termination date for 1 year, until September 30, 1996. The **Review Board** subsequently exercised its authority to continue operating for 1 additional year, until September 30, 1997. Because the **review** process proved to be more complex and time-consuming than anticipated, the President included in his fiscal year 1998 budget a request for a 1-year extension of the **Review Board** 's authorization.

- I support the **Assassination Records Review Board** 's request for a 1-year extension of its authorization so that it can complete its mission in a professional and thorough manner. I have always believed very strongly that Congress should not indefinitely continue funding for Federal entities that were clearly intended to be temporary in nature. The **Review Board** has informed me that it is confident that it will be able to finish its work and complete its final report if Congress will extend its life for 1 additional year, until September 30, 1998.

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TESTIMONY OF ATHAN G. THEOHARIS

PROFESSOR OF HISTORY
MARQUETTE UNIVERSITY
MILWAUKEE, WISCONSIN

on

S.J. Res. 282

"The Assassination Materials Disclosure Act"

Before the

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

MAY 12, 1992

STATEMENT OF ATHAN G. THEOHARIS

I am a professor of history at Marquette University, specializing in U.S. intelligence and surveillance policy, and have published extensively on matters relating to the history of the Federal Bureau of Investigation (FBI). As a consultant in 1975 to the Senate Select Committee on Intelligence Activities (the so-called Church Committee), I researched classified and nonclassified records deposited at the Truman, Eisenhower, Kennedy, and Johnson presidential libraries and since 1978 have filed numerous Freedom of Information Act (FOIA) requests for FBI records.

I welcome this opportunity to testify on S.J. Res. 282, the Assassination Materials Disclosure Act of 1992, and the question it raises: Should Congress create a special Review Board and authorize it to release or postpone the release of relevant Government records?

There are precedents for legislating procedures governing the release of "Government records relevant to the assassination of President John F. Kennedy," most notably the Freedom of Information Act of 1966, as amended in 1974, mandating the release of and stipulating the exemptions for withholding agency records. The congressional response to the so-called Nixon-Sampson agreement of 1974 offers a further precedent. Rejecting former President Richard Nixon's claimed right to retain exclusive control over the records pertaining to his presidency, including the right to destroy the so-called Oval Office tapes, Congress rescinded this agreement, created the Brownell Commission, and enacted the Presidential Records Act of 1978. Presidential records were public records, and not a president's personal property, Congress affirmed when defining the criteria to govern the disposition and release of all presidential records.

As in the case of the Nixon presidential records, there exists widespread public suspicion about the Government's disposition of the Kennedy assassination records stemming from the beliefs that federal officials (1) have not made available all Government assassination records (even to the Warren Commission, Church Committee, House Assassination Committee) and (2) have heavily redacted the records released under FOIA in order to cover up sinister conspiracies. S.J. Res. 282 effectively addresses these concerns first by creating an impartial body, the proposed Executive Director and Review Board, with the authority to review and if necessary subpoena all relevant records and then by establishing the criterion of full disclosure except in cases where "clear and convincing justification exists for postponing" the release of specified documents.

There is reason to believe that all relevant Government records pertaining to the Kennedy assassination have not been released and cannot be precisely identified by persons outside the executive branch. It might not be the case that all such records were filed under specific names and programs (Oswald, Ruby, Ferrie, Fair Play for Cuba Committee, Warren Commission). The federal intelligence agencies, for example, had in the

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recent past instituted separate records procedures to safeguard their most sensitive documents. CIA files, for one, are compartmentalized to limit access on the "need to know" principle. As one result, when responding in 1975 to the Church Committee inquiry into the Agency's drug testing program, CIA officials advised that the relevant program file had been destroyed in 1973. In 1978, however, CIA officials admitted to having discovered among the Agency's financial records extant documents which provided additional information about the scope of this program. During the Iran-contra hearings of 1987, moreover, CIA officials, at times, distinguished between official and informal records while NSC official Oliver North admitted to having employed a "do not log" procedure to ensure that his communications to his superior, John Poindexter, were not indexed in the NSC's central records system. Although the FBI maintains a central records system, FBI officials dating from 1940 had authorized a series of special records procedures to ensure that sensitive records were not serialized or filed in the Bureau's central records system or that sensitive information could be withheld if a FBI report was circulated outside the Bureau. These included: the Do Not File procedure for memos requesting and authorizing "black bag jobs;" blue/pink/informal memos for "administrative" matters in which case was "to be destroyed after action is taken and not sent to files section;" JUNE Mail for reported information received from "sources illegal in nature" or from "most secretive" sources such as "Governors, secretaries to high officials who may be discussing such officials and their attitude;" and administrative pages/cover letters for reporting "facts and information " which could "cause embarrassment to the Bureau, if distributed." Do Not File and blue/pink/informal memos were to be maintained in "office files" of senior FBI officials (and were to be destroyed every six months), JUNE Mail was to be maintained "under lock and key" in FBI field offices or in the Special File Room at FBI headquarters, while administrative pages/cover letters were to be detached whenever the report to which they were appended was "distributed to any agency outside the Bureau."

S.J. Res. 282 addresses the inability of requestors to identify all relevant Kennedy assassination records and how and where they might have been filed. Executive agencies are mandated to make available to the Review Board "all assassination materials" even if "uncertain if a record is assassination material" and the Executive Director is authorized to "inquire as to the existence of further records" and then recommend that the Review Board "subpoena such records in the event of denial." Properly placing the burden of ensuring the accessioning of all Kennedy assassination materials on agency officials who are most knowledgable about their agency's records practices, S.J. Res. 282 further enables the Executive Director and staff to identify additional records learned through a close reading of cross references in the "available" documents.

Section 6, moreover, addresses the companion obstacle to full disclosure, the discretion which the FOIA allows federal agency officials to withhold categories of information when releasing FOIA-requested documents. Particularly

during the 1980s agency officials have withheld information clearly relevant to an understanding of the relationship of the agencies to individuals identified directly or indirectly with the Kennedy assassination. Administrative and legislative changes encouraged such non-disclosure--notably President Ronald Reagan's 1982 classification order, legislation of 1984 totally exempting CIA "operational" files from disclosure, and legislation of 1986 authorizing the FBI to withhold and deny the existence of FBI informant files. Section 6 dovetails FOIA's exemptive provisions but, at the same time, introduces a stricter non-disclosure standard to require release unless "the threat to the military defense, intelligence operations or conduct of foreign relations of the United States posed by its disclosure is of such gravity that it outweighs any public interest in its disclosure."

My skepticism about agency practices in withholding documents, moreover, is based on my experiences as a frequent user of the FOIA. I recognize that this is not the proper forum for reviewing how federal agencies have processed FOIA requests but think the following examples shed light on whether the FOIA, and its provisions accepting agency discretion, can be expected to ensure full and reasonable disclosure.

In 1980, I filed an FOIA request for the Official and Confidential File of former FBI Director J. Edgar Hoover and in 1983 received approximately 6,000 heavily redacted pages of this 17,700 page file. Exercising my right to appeal these withholdings, I eventually (in 1985) received approximately 2,000 additional documents. Granted the right of a second appeal, at this time I offered a detailed folder by folder challenge, arguing that much of the withheld information was already in the public domain and further that since the former FBI director had maintained in his office derogatory information on presidents, members of Congress, and other prominent personalities the question of what use had been made of this information required its release. These arguments proved somewhat convincing and in 1989 the FBI released approximately 15,000 pages including information formerly redacted in the earlier processed releases.

The enclosed Fortas document (see Appendix A) was one of the documents released to me in 1989, but withheld entirely both in 1983 and 1985. When withholding this document (and five others pertaining to the same matter), the FBI had originally claimed that its release would reveal FBI sources and methods and violate personal privacy rights. Yet, Fortas had not been acting as a FBI Criminal Informant or Security Informant when concerting with FBI Assistant Director Cartha DeLoach in 1966 and the withheld information records Fortas's willingness to service the political and bureaucratic interests of President Lyndon Johnson and FBI Director J. Edgar Hoover.

This example, because the FBI had evaluated the same document three times, offers insights into the criteria employed to deny the release of records. And while the agency ultimately decided to disclose, this

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decision indirectly supports S.J. Res. 282's "clear and convincing" standard. For, my original 1980 request and receipt in 1983 of the heavily redacted Hoover file had become known to U.S. News and World Report which devoted its "1984" issue of December 1983 to summarizing the contents of the released Hoover file. The resulting publicity heightened public and media interest in the heavily redacted Hoover file. By 1989, if not 1985, FBI officials were no longer williug to risk FOIA litigation challenging their claimed interpretation of the FOIA's exemptive provisions.

My second example bears indirectly on how the FBI would process a FOIA request for still-unreleased wiretap records first diclosed by the House Assassination Committee. The House report had disclosed that FBI wiretap intercepts recorded critical comments of organized crime leaders, notably Carlos Marcello, regarding the Kennedys. Did the Mafia put a "contract" out on John Kennedy? Did FBI officials purposefully withhold this information from the Justice Department and the Secret Service in 1963 and then from the Warren Commission in 1964? The answers to these questions would require the release of the wiretap transcripts as well as other FBI memos recording how the FBI dealt with these transcripts. My experience involving how the FBI has processed my requests for other FBI wiretaps suggests that any FOIA-released Kennedy documents will be so redacted as to preclude answers to these questions. In describing one of my FBI wiretap requests, let me also outline for the Committee the considerably broader "records universe" sought by scholars and which distinguish our approach from those of journalists, congressional staff, and lawyers.

This case of FBI wiretapping involved Henry Grunewald, a Washington, D.C.-based investigator with close ties to New York insurance executive Henry Marsh, isolationist Republican congressmen, former New Dealer Thomas Corcoran, and Washington bureaucrats. FBI officials were keenly interested in Grunewald's activities, confirmed by the inclusion in Hoover's office file of two folders containing the transcripts of two FBI wiretaps of Grunewald in 1941 and 1945. As in the case of the Fortas document, these two folders had originally been withheld in entirety on sources and methods and personal privacy grounds. The released 1941 wiretap transcript particularly interested me as I had learned from documents contained in former FBI Assistant Director D. Milton Ladd's still extant office file that Grunewald, as other conservative critics of the Roosevelt Administration, became the subject of FBI "espionage" investigative interest during the early 1940s. The Ladd file, however, did not resolve whether this 1941 wiretap had been known or authorized by the Attorney General or the White House. Accordingly, I filed a further FOIA request for the FBI's headquarters files on Grunewald. The released, redacted records confirmed the Roosevelt Administration's interest in Grunewald's activities in 1940 but (see Appendix B): either because of redactions or the Justice and Treasury Departments' failure to have processed as yet documents which they originated the

wiretap authorization question cannot be resolved.

The heavily redacted Grunewald files further disclosed that Grunewald became the subject in 1953 of a third FBI wiretap. In 1952, a House Committee held public hearings on the subject of influence peddling that centered on Grunewald's activities, among others. This inquiry proved embarrassing to the Truman Administration and was exploited by the Republicans during the 1952 presidential and congressional campaigns. In 1953, the new Republican-controlled House revisited this issue. Particularly interested in Grunewald, the so-called Kean Committee sought assistance from the Justice Department. The heavily redacted records (see Appendix C), however, preclude answers to the questions as to why concurrent with this congressional inquiry Attorney General Herbert Brownell had requested and authorized this wiretap and whether the Justice Department's assistance to the Committee included information learned from this wiretap. (I have only appended a summary of one FBI report to the Attorney General, based on this wiretap. The released transcripts of this 1953 wiretap, in contrast to those released to me involving the 1941 and 1945 taps, were heavily redacted--the FBI withheld on personal privacy grounds the names and intercepted conversations of Grunewald's telephone partners, rendering the released transcripts virtually incomprehensible and of minimal research value.)

I have gone into detail on the Fortas and Grunewald matters as I think they offer insights into the processing of FOIA requests, an issue central to these hearings. It has been my experience that the "culture" of the intelligence agencies encourages agency officials to interpret the FOIA exemptive provisions broadly but also that more senior agency officials will release even embarrassing information in those instances when their decisions are potentially subject to critical scrutiny. The Review Board procedure promotes this needed accountability. At the same time, the Board's independence can undercut public suspicions that claimed national security or privacy justifications are a mask to preclude full disclosure. Surely now, thirty years after President Kennedy's assassination and with the end of the Cold War, we should be able to assure the public that relevant Kennedy assassination records are neither secreted nor withheld for bureaucratic reasons.

While I doubt that the rlease of the Kennedy assassination records will conclusively resolve the question "who killed Kennedy," I am convinced that the procedures outlined in S.J. Res. 282 will undercut suspicions that records documenting a government conspiracy are being purposefully withheld. Release of the Kennedy assassination records, moreover, will service other significant research interests of the scholarly community. Let me conclude by briefly list some of these non-assassination-related questions: (1) the liaison relationship between the FBI and the CIA before and after the assassination; (2) the liaison relationship between the FBI and the Secret

Service and the background to the FBI's revised delimitation agreement of 1964 with the Secret Service; (3) the politics of presidential commissions (the purpose for creation, the level of agency cooperation, and the responses of federal agencies, Congress, the White House, and the public to the Warren Commission's findings); (4) the paradox of the FBI's apparent disinterest in Oswald (Soviet defector and Fair Play for Cuba Committee activist) in contrast to the intensity of FBI interest in more respectable national leaders (Eleanor Roosevelt, Adlai Stevenson, Joseph Alsop, Ernest Hemingway, even John Kennedy); and (5) the FBI's and the CIA's relationships with and uses of informants and sources recruited to provide foreign intelligence, counterintelligence, criminal, and "subversive activities" information.

TESTIMONY OF SENATOR DAVID L. BOREN

BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

ON THE ASSASSINATION MATERIALS DISCLOSURE ACT OF 1992

May 12, 1992

Thank you, Mr. Chairman. I very much appreciate the opportunity to appear before this Committee to discuss with you Senate Joint Resolution 282, the Assassination Materials Disclosure Act of 1992.

The purpose of this legislation is to provide for a comprehensive process ultimately leading to the release of all materials held by the United States Government regarding the assassination of President John F. Kennedy. Congressman Louis Stokes, the distinguished former Chairman of the House Select Committee on Assassinations, has introduced identical legislation in the House of Representatives. I am particularly pleased, Mr. Chairman, to have you as an original cosponsor of this legislation.

We have had at least four substantial federal government investigations into the Kennedy assassination: the first conducted by the Warren Commission appointed by President Johnson in 1963; the second, by the President's Commission on CIA

Activities -- the Rockefeller commission -- in 1975; the third by the Senate Select Committee to Study Governmental Operations with Respect to Intelligence -- the Church Committee -- in 1975 and 1976 as part of its investigation of CIA assassination plots against foreign leaders; and finally, the extensive investigation of the House Assassinations Committee in 1978 and 1979.

Each of these investigations, particularly the Warren Commission and House Assassinations Committee investigation, produced long, detailed public reports concerning the Kennedy assassination. In addition, literally hundreds of books and articles have been written on the subject.

Yet still, almost 30 years later, the questions remain.

The recent release of the controversial film "JFK" has raised them anew, suggesting that answers may well lie in the assassination records and other materials that remain sealed by our Government. Even prior to the release of "JFK," in fact, there were diligent efforts made by researchers as well as concerned legislators to open these files for public review.

Mr. Chairman, I do not know what all of these files contain. Specifically, I do not know whether they contain information that would call into question or undermine the findings of the previous investigations or not.

But it seems to me the time has come to open these files to the public and let them speak for themselves. Let historians and journalists and the people read them, and draw the appropriate conclusions.

As a general principle, the Intelligence Community should make available its records after the passage of a reasonable amount of time when current sources and methods would no longer be compromised. The American people have a right to assure themselves to the greatest degree possible of the accuracy of the historical record of our government. The timely release of all documents of historic value and importance helps to assure that even the most secret programs of our government will be operated in accordance with basic American values. Current intelligence operations will be even more carefully conducted when it is recognized that they will be scrutinized by the public during the lifetime of many of those who administered the programs.

This is not to say that all of the files should simply be pulled from the vaults, turned upside down and dumped onto Pennsylvania Avenue for general consumption. Careful review is required to ensure responsible public policy and fundamental fairness. Even after almost thirty years, there remain governmental interests, as well as individual privacy interests, that we must consider. But these concerns must not stand in the way of disclosure unless they are shown in a given case to be especially compelling.

What this Resolution proposes is a comprehensive, government-wide review of the Kennedy assassination records conducted under the auspices of an impartial, independent board.

It may be useful to state precisely what these records are. First, they encompass all of the records of the FBI, the CIA, Secret Service, military intelligence, and other Executive branch agencies which may pertain to the Kennedy assassination. They also include the records of the Warren commission, the Rockefeller commission, the Church committee, and the House Select Committee on Assassinations. Many of these records are now stored under seal at the National Archives, while many others remain in agency files. The Rockefeller Commission files were claimed by President Ford as part of his personal papers and then deeded by him to the Ford Presidential Library in Ann Arbor, Michigan. There may be other relevant records at the Kennedy and Johnson presidential libraries. These presidential library records are administered by the National Archives, and thus we envision that they would be subject to this Joint Resolution.

I can report to you briefly on the status of one group of these records -- the Church committee files, which are now in the custody of the Senate Select Committee on Intelligence. All of the Church committee files are housed in some 500 boxes in a single small room at the National Archives. There is a rudimentary index, but it is not always sufficiently descriptive,

and a file-by-file review is probably necessary. My staff has examined some of these files, and we believe the process of separating out J.F.K. assassination materials -- once that term is more precisely defined (as I will discuss in a moment) -- will not prove especially cumbersome or time-consuming. The Kennedy assassination investigation was only a small component of the Church committee's work and the investigation conducted concerned only the role of the intelligence community in investigating the assassination; it did not seek to determine who killed President Kennedy. In addition, many of the Church records are in fact copies of records originated by other agencies. However, the Church staff did interview numerous witnesses, both inside and outside of government, and the transcripts and notes of those interviews, among other materials originated by the Church committee, are an important part of the J.F.K. files.

Although many government records on the J.F.K. assassination have previously been released by the Archives and as a result of Freedom of Information Act litigation, a great deal remains shielded from public view. Approximately twenty boxes of the internal files generated by the Warren Commission are still sealed. Experts estimate that a much greater volume of FBI and CIA files remain sealed. Many pages of documents that have been released have been so extensively redacted that their informational value is minimal. The extensive files of the House Assassinations Committee, some 848 boxes of materials on both the Kennedy and King assassinations, currently are sealed until the

year 2029.

To date, these records have been withheld from the public due to a variety of concerns: the fear of damaging foreign relations and military defense, the concern for disclosing the identities of confidential sources or informants, and the desire to protect the privacy of individuals. While these concerns may yet retain some validity in a very few isolated cases, it seems to me that with the passage of time, there should remain very few objections to full disclosure. I believe it is time to review these records, not in terms of the old assumptions, but rather in light of the need for openness and to encourage confidence in the Government. We need to assure ourselves of the facts, that there is not information lurking somewhere in the Government that would shed new light on what remains perhaps the most heinous and enigmatic crime of this century.

The Joint Resolution would make it much harder to justify the continued shielding of a document from public view. It would also create a process by which many records could be promptly released. Any arguments made for withholding any document or portions of it must be weighed against the strong public interest in disclosure. The resolution establishes this kind of balancing test -- with a strong presumption in favor of disclosure.

In addition, to address the problem of heavily redacted and therefore meaningless documents, the Joint Resolution borrows a

page from the Classified Information Procedures Act, the law that covers the handling of secret information in criminal trials. Under that law, federal judges have discretion to permit introduction in evidence of summaries or substitutes in place of classified information. The Joint Resolution provides for creation of such summaries or substitutes where appropriate, so that the public can learn essential facts about the Kennedy assassination from a document even where references to private matters or crucial national security secrets would render the document itself mostly unreleasable at present.

In all cases, the Joint Resolution requires that the presumption be in favor of release. All records will be released unless there is clear and convincing evidence that postponing release is essential to a vital interest.

Now let me briefly discuss the process established by the Joint Resolution for applying these disclosure standards.

The Joint Resolution creates a five-member panel called the Assassination Material Review Board. The members of this Review Board would be distinguished private citizens outside of government who have had no prior involvement with previous inquiries into the Kennedy assassination. This Review Board, aided by an executive director and staff, would play the central role in the release of the assassination materials. The Board would be required to complete its work within two years of its

first meeting, although it is certainly expected that it could be completed much more quickly. The point is to proceed expeditiously, while still doing a careful job.

We faced a difficult choice in deciding who should appoint the Review Board, and I am aware your Committee is looking at other alternatives. I am certainly amenable to this, but let me give you some idea of why we came out as we did. Given the allegations of government cover-up and the potential for perceived conflict of interest, allowing the President or Congress to appoint the Board did not seem appropriate. We settled instead on the special three-judge federal court division that appoints independent counsels for criminal investigations.

The Justice Department, in an April 27, 1992, letter to Chairman Glenn, worries that "it is not clear" that our approach to appointing the Review Board is constitutional. In addition, some may feel that a judicial panel is ill-suited to make appointments for this task. The judges themselves, who have very small staffs and other concerns, might well prefer to avoid this assignment. In short, we recognized that this approach would raise possible constitutional objections, as well as practical ones, but, on balance, we felt the appointment authority should rest with an impartial source without no interest or stake in the outcome. I believe a strong argument can be made that the appointment process is constitutional under the principles enunciated by the Supreme Court in <u>Morrison v. Olson</u>, 487 U.S. 654

(1988), which upheld the power of the same court division to appoint independent counsels to investigate executive branch misconduct.

If the Committee nevertheless concludes that this approach is undesirable, I would offer two alternatives for consideration, conceding that both are also susceptible to possible constitutional objection. The first would be for the President and the leadership of the House and Senate each to appoint a given number of Board members. Each body has interests in, and responsibility for, certain of the records at issue. I would not make these appointments subject to Senate confirmation, since they are not policy positions, and confirmation would only delay the task at hand. A second alternative would be the approach suggested by the ACLU: adopt some variant of the formula used last year by Congress in establishing the Advisory Committee on Historical Diplomatic Documentation in the State Department, namely to have the President appoint based on specific criteria, i.e. background in particular disciplines, with most of the members coming from lists submitted by designated professional associations.

Once the Review Board, however it is appointed, is constituted, it would appoint an executive director, and the first step in the process would be to make available to the Executive Director all Government assassination materials. Where the Executive Director suspects that the agencies have failed to

submit some of the relevant records, he or she has authority to question the agencies and to use the subpoena power of the Review Board to obtain any additional records.

The Executive Director, assisted by employees of the Review Board and, if deemed necessary, detailed from elsewhere in the Government, would undertake the initial screening of these records. If the Executive Director concluded that a particular record was appropriate for release, the record would automatically be released, unless the record implicated personal privacy or the Executive agency or congressional committee with responsibility for that record filed an appeal with the Review Board. In this manner, many records could be promptly released without formal Review Board deliberations.

If the Executive Director determined that a particular record was not appropriate for release under present circumstances or that the record implicated personal privacy concerns, he or she would automatically be required to refer that decision to the Review Board.

The Executive Director would also be permitted to refer particularly difficult decisions, or decisions requiring further investigation, to the Review Board.

In deciding on appeals and referrals from the Executive Director, the Review Board would have authority to conduct

hearings and subpoena records and witnesses.

The Review Board would have final say as to the release or non-release of all materials, except that in the case of Executive branch materials, the President would have the authority to supersede the Board's determination and postpone release. But each time the President did so, he would be required to explain his reasons, both in a notice to the public and to the Congress. Decisions by the Review Board itself to postpone release of records would also have to be explained to the public and Congress.

Finally, under the Joint Resolution, no item would remain permanently sealed. The Review Board, before finishing its work, would designate as to every item still withheld a specified time or a specified occurrence following which the item could be released. The files would then be transferred to the Archives, where the Archivist would have a continuing duty to reconsider them for release under the standards set by the Joint Resolution.

Materials released by the Archivist or the Review Board would be available in the Archives for public review and copying.

Our Joint Resolution makes clear that an Executive branch agency or congressional committee retains its existing powers under the law to release a particular record even if the Joint Resolution does not require it to do so, and that the members of

the public can continue to use the Freedom of Information Act to request from the agencies documents related to the assassination.

Mr. Chairman, this Resolution may appear complicated, but the matter of disclosure is itself complicated. It cannot be accomplished arbitrarily or summarily. The process established by the Resolution, in my view, is logical and takes account of all the interests and equities in the disclosure of these documents. In the end, I think it will result in all of the pertinent information pertaining to the assassination of President Kennedy being made public in a prompt and orderly way, and, in doing so, will help restore confidence among the public in our Government.

Since the Joint Resolution was introduced, comments have been received from the Justice Department as well as others suggesting the need for change.

With regard to the reaction of the Justice Department, I must say I found it very unfortunate that the Department chose to take what I found to be an extreme, hard-line position in opposing many of the key provisions of the Resolution. Rather than showing the flexibility needed in this unique circumstance to deal cooperatively with the Congress on a matter that is a serious concern for many Americans, the Justice Department chose to reassert familiar claims of Executive privilege and all of the other reasons asserted over the years to block the release of government information.

The whole point of this legislation was to create new criteria and new procedures to maximize the release of information hitherto withheld by the Government. The old laws and old procedures have been tried for the last 30 years, and have not produced the type of disclosure needed to restore the confidence of the American people.

It seems to me that just this once, where the public policy interest in full disclosure of these records is so apparent, the Justice Department could dispense with its usual "to-the-last-man" defense of Executive branch prerogatives, and help us deal with solving the problem.

I feel obliged to take special note of one point in the Justice Department letter, and that is their claim that the Executive branch must have not only increased safeguards over its own material -- but also have the ability to veto release of any congressionally-created assassination record. This strikes me as preposterous, particularly coming from a department that is ostensibly so concerned to preserve a separation of powers. If Congress wants to release information it has developed, the President should not be able to stand in the way.

Hopefully, the Committee will yet be able to obtain executive branch cooperation and move forward with this process. The public expects action on this matter, as the many letters, postcards, and

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telephone calls to congressional offices demonstrate.

Having said this, there are, in fact, several points raised by the Justice Department's letter, and by private citizens in touch with me, which I believe merit further consideration by the Committee.

1. Perhaps the most important matter involves setting the boundaries of "assassination material." The Joint Resolution defines "assassination material" as "a record that relates in any manner or degree to the assassination of President John F. Kennedy...." But given the wide range of theories that have developed as to who killed President Kennedy and why, many types of records arguably relate in some manner to the assassination. What records regarding, for example, Cuba, Vietnam, and organized crime should be covered? This matter requires careful consideration.

The Justice Department urges a substantial narrowing of the definition of "assassination material," apparently to only those records that on their face directly concern the assassination. I am concerned that this formulation may be too narrow. There is widespread public suspicion that some sort of conspiracy led to the murder of President Kennedy. If we go out of our way to avoid records that might shed light on activities linked to such an alleged conspiracy, we make little progress toward assuring the public that it has the full story. If we err on the side of

inclusiveness, and as a result learn a bit more about the operations of our government and our foreign policy in the early 1960's, I think we will benefit. My only concern would be that the search becomes so broad that it delays action of the release of documents clearly germane to the assassination. But where records have already been segregated, such as the executive branch materials obtained by the House Assassinations Committee, full review is probably appropriate.

I do, however, suggest that the Committee, either in the Joint Resolution itself or in report language, set more precise parameters defining "assassination material," or else direct the Review Board to do so promptly after it is established. Otherwise, we may end with widely varying interpretations by the various records agencies and committees as to what documents should be forwarded to the Review Board executive director.

2. As the Justice Department's letter to Chairman Glenn noted, the Joint Resolution, as drafted, would give an agency or committee control over release of a record it originated even if that record contained information obtained from another agency or committee. I agree that this provision should be changed to give agencies authority over release of their own information. However, the change suggested in the Justice Department letter may not by itself do the trick, because a record, for example a lengthy congressional report, may contain both information

developed by the body that created the record and information originated by a- xecutive agency. Instead of letting either of these two "orig ting bodies" have veto power over the release of an entire document, we should work out language that give an agency or committee control over release of that portion of a document for which it was responsible even if other information in the document was originated elsewhere.

3. On reflection, I think it would be best to amend the Joint Resolution to make the records of the Review Board itself subject to the Freedom of Information Act and the Privacy Act, and to make the Board's proceedings subject to the Sunshine Act and the Administrative Procedures Act. A law mandating increased government openness should not itself establish an exception from general standards for accountability. I still strongly believe, however, that we should avoid subjecting the Board to extensive court litigation over the release of the J.F.K. files themselves either under the standards set by the Joint Resolution or under the Freedom of Information Act.

4. Section 11(a) should probably be amended to make clear that the Joint Resolution's provisions take precedence not only over other laws, but also over executive orders and regulations.

5. A sentence might be added to Section 8(f) to ensure that the public is clearly informed when summaries or substitutes are released instead of actual records or information: "Any such

summary or substitution shall be clearly labeled as such when released to the public."

6. The Joint Resolution should probably be amended to recognize the records of the Rockefeller commission as a component of this effort. The Archives would be the appropriate custodian of Rockefeller commission materials for purposes of the Joint Resolution.

I thank the Committee for this opportunity to express my views on this measure.

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Statement for the Senate Committee on Government Affairs,

May 12, 1992

Ernest R. May

It is an honor to be invited to testify on this bill. I am a professor of history at Harvard University, where I teach both in the history department and in the John F. Kennedy School of Government. While I have done research on the history of intelligence agencies and have served in Washington from time to time as a consultant, I do not speak as an expert on the matter before the committee. My comments are merely those of a historian looking at legislation designed to unearth historical source material.

The bill now under consideration seeks to clear doubts about President Kennedy's murder. The Warren Commission had the same aim. Its make-up was supposed to reassure the public. It failed. The Commission reported in 1964. Almost within months, books challenging its findings hit best-seller lists.

Over time, other theories multiplied. Now, it takes whole books just to list books about the murder. Some of these books picture the CIA or FBI as plotters. This is not new. A number appeared in the 1970s. Recently, this particular set of theories has found new life. Two books of this genre reached best-seller lists in the spring of 1992, and Oliver Stone's film, "JFK," became a box office hit.

The bill now under consideration would open records so that the public can be reassured that these theories are fantasies. The stated aim is to "contribute to the trust of the people in their government."

To achieve this, the bill proposes to create a five-person Review Board. As reassurance against a cover-up in behalf of the President or Congress, the District of Columbia Circuit of the U.S. Court of Appeals would appoint the Board. (The Supreme Court presumably is thought too partisan; besides, it might bring to mind Chief Justice Warren.)

The bill says that members of the Board are to be "distinguished and impartial." Otherwise, it demands only that they not be currently in government employ and that they never have been involved in any investigation of the Kennedy murder.

The Board and its Executive Director would have wide powers. They would look at all materials relating to the murder. If they suspect any agency of withholding material, they would have a right to conduct a hunt. The bill gives the Board power to subpoena records and persons, to take testimony under oath, to grant immunity to witnesses, and to punish defiance.

The Board's decisions are to be final unless the President himself intervenes to insist that some piece of information not be released. The bill giving the Board its powers is to "take precedence over any other law, judicial decision ..., or common law doctrine" that might be in conflict.

My comments on this bill are mostly cautionary. I question whether <u>any</u> legislation can achieve all that this bill seeks to achieve. I question giving to a court-appointed Review Board such broad responsibilities and powers. I believe that a Review Board differently selected, with a more limited mandate, could do a better job.

The first cautionary point concerns the aim of clearing doubts about the Kennedy murder. Even if every bit of relevant documentation becomes public, it will not yield a story that all Americans will accept. Why should it? Though we now know just about everything about the Pearl Harbor attack, new conspiracy theories continue to be woven. One of the latest has Winston Churchill as the villain!

Despite more than a century of research, new theories still appear about conspirators helping John Wilkes Booth kill Lincoln. The chances are that the same will always be true for Oswald and Kennedy. After another decade or so,

however, Kennedy's murder will probably become, like Lincoln's, more an interest of buffs than of the public at large.

The chances of clearing away all doubts are lessened by the fact that every bit of relevant documentation will not be released. This bill itself speaks of protecting secret agents and intelligence sources and methods. It speaks also of privacy rights. CIA and FBI reports and National Security Agency intercepts contain much material that, by these criteria, would have to remain secret.

In fact, still more material may be kept from the public. This bill refers only to protecting the privacy of living persons. If the Review Board yields to human feelings, it may extend protection to families and friends. Suppose, for example, that it sees raw FBI files recording old accusations against some Cuban-American. Even if the person is dead, anyone ever connected with that person could suffer should the accusations become public. If the Review Board suspects that the accusations were malicious and false, will it not choose to leave the files secret?

Also, it has to be assumed that some files will turn out to have been lost or destroyed. The proposed Review Board would thus have to confess not only that it chose to

leave some material under wraps but that other material was simply missing. Would spinners of conspiracy theories take the Board's word? Would they not instead accuse it of colluding in concealment of "smoking guns"?

The Review Board would meanwhile be under pressure not to let privacy rights or other considerations inhibit release of documents. Investigative reporters, writers, and docudrama producers would hammer at it. So would scholars, including many interested in subjects other than the Kennedy murder. So would others with axes to grind.

Some material sought might have only a remote relationship to the murder. The clamor would be no less ferocious. How much of the central files of the FBI and CIA would have to be opened, for example, to persuade disciples of Mark North or Mark Lane or Oliver Stone that neither FBI nor CIA officers participated in a murder plot?

The Review Board would surely be urged to pursue data on the possible involvement of right-wing extremists. Obvious items would include not only FBI files but also tax returns. Imagine the scope of possible documentation if, in fairness, the Review Board also sought data on financial transactions by individuals associated with Vice President Lyndon Johnson!

I forecast, in other words, that new evidence will not dispel conspiracy theories. At most, it will curb some of the more adventurous theorizing.

I also forecast that, if release of the evidence is managed as this bill proposes, one of two results will follow.

If the Review Board yields to outside pressures, it will conduct a fishing expedition. Much embarrassing and possibly harmful information will be made public. Alternatively, the Review Board will resist pressure. It will define its mandate narrowly. It will be prudent in what it reveals. It will then be accused of a "whitewash." The latter result could make matters worse rather than better. Suspicion could be fed, not allayed.

There may, however, be better means of doing what needs doing. The current bill would have the Review Board and its Executive Director examine all materials to be released. They would be charged with ferreting out undisclosed material, and they would have effective responsibility for deciding what would and would not be released.

An alternative would be a bill simply enjoining holders of records to identify and locate materials that, in the language of the current bill, "relates in any manner or de-

gree" to the murder of President Kennedy. The injunction would apply to all congressional committees and all executive agencies, including the CIA, the FBI, the Secret Service, and the National Archives. The bill could direct these record-holders to make the materials public. It could specify that the only materials to be held back would be those itemized in the current bill -- agents, intelligence sources and methods, etc.

Where legislative writ does not run or is disputable, a statute could urge voluntary action. The current bill asks such cooperation from state and local agencies and foreign governments. A statute that sought to avoid constitutional disputes could ask the same of the President regarding records of the White House and Executive Office.

This alternative bill could require or request public reports describing materials withheld from release — their characteristics and quantities, the general reasons for nondisclosure, and plans for eventual release.

A Review Board could be created with a limited — and more workable — mandate.

Its first duty could be to review record-holders' guidelines. These might well differ from agency to agency. Procedures for searching National Security Agency files of

communications intercepts might not be the same as those for searching the much less voluminous files of CIA stations and headquarters divisions. The Board could try, however, to ensure comparative uniformity in the diligence of searches.

The Board could try also to ensure comparative uniformity in definitions of what is to be withheld. It might urge, for example, that the intelligence sources and methods criterion apply only to sources and methods in current use, not just to any ever used.

The Board's second duty could be to scan materials that record-holders proposed actually to withhold. The Board might question record-holders' decisions. If so, it could ask that the agency or committee think again. If differences continued, the Board could appeal to the President or, for Congressional documents, to the President of the Senate or the Speaker of the House.

In a final public report, the Board could describe any still unresolved differences. While the description would be in generalities, the issues would become publicly known. The broad purpose of the Board's report would be to validate the record-holders' non-disclosure decisions.

Such a Review Board could be selected by comparatively traditional methods. Nominations could be asked of the

American Bar Association, the American Historical Association, the American Political Science Association, or kindred bodies. Appointments could be made by the President, with advice and consent of the Senate.

Unless the quantity of material withheld proved to be much larger than I would expect, the Review Board could be kept small. It could probably manage with minimal staff.

I believe that this alternative statute would accomplish all that can be accomplished. It would leave the onus for release or non-release of records on those already familiar with these records. Committees of Congress would make rules for their files. The President, the heads of departments, the Directors of Central Intelligence and the FBI, and the Archivist of the United States would make rules for theirs.

This alternative statute would limit the powers and responsibilities to be thrust on an untried and potentially vulnerable Review Board. It would create a Board with the assignment only of checking the coherence and consistency of criteria for disclosure and non-disclosure.

Since the invitation to testify included questions reaching beyond the current bill, I take the opportunity to respond to that concerning general declassification

policies. I believe the procedure just outlined could be applied much more widely. A statute could declare that all government records more than thirty years old would become public unless the originating agency showed specific cause for continued non-disclosure. A Board or Commission appointed by the President with the advice and consent of the Senate could have authority to review all such materials and to question or appeal the non-disclosure. This approximates practice in the United Kingdom.

In conclusion, I repeat a warning against expecting any legislation to create consensus and thereby "contribute to the trust of the people in their government." Inventors of conspiracy theories will always be more ingenious than assemblers of evidence. The immediate result of releasing records will be, moreover, to provide grist for the theorists' mills. Even if everything were released tomorrow, it would take at least a decade for researchers to sort the newly released materials. In the meantime, conspiracy builders would be picking out those bits and pices of evidence that suited them. In the long run, release of documents will get us closer to truth; but, as Keynes observed, that long run probably stretches beyond any of our lifetimes.

TESTIMONY OF JAMES H. LESAR

PRESIDENT

ASSASSINATION ARCHIVES AND RESEARCH CENTER

ON

S.J. RES. 282

"THE ASSASSINATION MATERIALS DISCLOSURE ACT OF 1992"

BEFORE

THE COMMITTEE ON GOVERNMENTAL AFFAIRS

OF THE UNITED STATES SENATE

May 12, 1992

Mr. Chairman and members of the Committee:

I am honored to have this opportunity to testify before you on the legislation to require the government to release its records pertaining to the assassination of President John F. Kennedy. I appear on behalf of the Assassination Archives and Research Center ("the AARC"), of which I am President. The AARC is a private, non-profit organization which collects, preserves and disseminates information and materials on political assassinations. The AARC is funded by membership dues and donations from the public. I am an attorney specializing in Freedom of Information Act litigation, and have litigated well over 100 such lawsuits. Over the past twenty years I have represented nearly all of the major authors and researchers who have litigated their Freedom of Information Act requests for records pertaining to the assassination of President Kennedy. To date, I have handled over fifty such lawsuits.

I have carefully studied the proposed legislation. I have also read the letter which you received from the Department of Justice. I have heard that the Administration may seek to achieve its goals, particularly that of using more restrictive standards for release of Executive Branch records, by issuing an executive order rather than awaiting action by Congress. In my mind the only thing worse than seeing the Justice Department's wishes granted in legislation would be to see them set forth in a stand-alone executive order which goes unchallenged by Congress. Legislation is needed to bring each branch of government which holds records

on to the same playing field, and to create a process which is accountable, independent and credible. Incorporating the Justice Department's restrictive standards in an executive order would duplicate the devastating damage to the ideal of full disclosure which occurred when the Reagan Administration successfully sabotaged the 1974 amendments to Exemption 1 by drastically altering the standards for classifying information in the interests of national security.

The difficulty which researchers have had gaining access to Kennedy assassination materials amply demonstrates the need to alter the standards employed by the FOIA and the current executive order on national security classification. If you support release of the Kennedy assassination records, you cannot favor the Justice Department's recipe of simply mixing one part political will to three parts of existing standards and stir. You must substantially liberalize the existing standards and make it stick.

A few illustrations from my practice will show the inadequacies of the FOIA and the enormous frustration which accrues to those who attempt to use it to obtain information about the Kennedy assassination. These examples reveal a pattern of delay, costly litigation, and untrue representations by the government. Cases brought in the 1980's also show that massive withholding of information, with little significant information being released.

Case 1: In 1969 Harold Weisberg, a leading Warren Commission critic, made a simple request to the FBI. He wanted to see the results of the spectrographic tests which had been conducted on

bullet(s), bullet fragments and items of evidence allegedly struck by bullets during the assassination of President Kennedy. Denied access by the FBI and the Attorney General, in 1970 he brought suit. A four-year legal battle ensued. First, the district court, relying on the Justice Department's representation that it was not in the national interest to release the results of these scientific tests, denied his request. A court of Appeals panel reversed, but the dissenting judge wrote a scathing opinion in which he referred to FOIA requesters as "rummaging writers" and characterized Weisberg as "some party off the street." Stating that the FOIA "forfend(ed) against" Weisberg's proposed further inquiry into the Kennedy assassination, he concluded his dissent with a Latin phrase in capital letters, "REQUIESCAT IN PACE." "Rest in Peace." But the case did not rest in peace. The Justice Department sought a rehearing before the full court, which was granted. On rehearing en banc, the full court ruled that the files of the FBI were exempt from the FOIA's disclosure requirements. That case set a precedent so bad that when Congress first amended the FOIA in 1974, it specifically overturned the Weisberg case, requiring that the FBI and other law enforcement agencies demonstrate that allegedly exempt records fall within one or more of six enumerated harms.

In 1975, when the new amendments took effect, Weisberg again brought suit on his request for the spectrographic analyses, this time adding a request for neutron activation testing on the same evidentiary items. This new phase of the battle lasted eight years and involved three trips to the Court of Appeals. Ultimately,

Weisberg obtained important records on these scientific tests, including records that the FBI had first said did not exist, then claimed were missing or destroyed. Other records were never located or were meaningless. From the date of the first request, the legal battles lasted fourteen years.

Case 2: In 1980 another requester asked the CIA to release all of the records it had made available to the House Select Committee on Assassinations. The CIA refused and the requester brought suit. In court the CIA stated that there were approximately 300,000 pages of records responsive to the request. I spent the first three years of this lawsuit litigating four threshold issues raised by the Government. Had my client lost any one of these four threshold issues, the CIA would not have had to release a single page from its 300,000 page collection.

By 1984 the CIA had begun to release a trickle of documents. Although the CIA told the court that it had assigned seven people to work on the request, it processed the documents at an incredibly slow pace. When it became evident that it would take the CIA several decades to process all of the documents, the requester had no choice but to drastically limit the scope of his request. Thus, he entered into a stipulation which restricted his request to some of the subjects discussed in the report of the House Select Committee on Assassinations and its supporting volumes. Although the CIA's job of reviewing documents was reduced by more than one-half, it took several more years for it to complete processing of the remaining documents. Moreover, the CIA continued to withhold

virtually everything. Only a few thousand pages were released, and most of them consisted of newspaper clippings, records that previously had been released, or documents that were heavily redacted.

Case 3: In 1976, Dr. Paul Hoch requested two batches of CIA documents which had remained to be processed after the CIA had made its initial releases of Kennedy assassination documents. Many of the records responsive to this request related to the 1966-1969 investigation and trial of Clay Shaw by New Orleans District Attorney Jim Garrison, who charged that Shaw, David Ferrie and others had plotted to kill the President. The CIA repeatedly told Hoch that his request was being processed and that if he would only be patient the documents would be released in "a few months," "in six to eight weeks," "in the near future." Indeed, Hoch received such assurances on no less than 11 different occasions over a six-year period. After having been strung-out for six years, Hoch retained counsel and filed suit. After the suit was filed, evidence was developed which indicated that all the CIA had done over the previous six years was to number the documents. It had numbered several documents one month, a few more another month, a couple more the next month. Then, in one month, it engaged in a veritable orgy of numeration, numbering, as I recall, nearly a hundred documents that month.

A few months after Hoch filed his complaint in district court, the CIA produced 808 pages. It also continued to withhold a considerable volume of materials; mostly on grounds of national

security or because disclosure allegedly would identify intelligence sources and methods. The district court upheld all of the CIA's exemption claims save one. This one was an 11-page memorandum which the CIA swore must be withheld in its entirety under Exemption 5's deliberative process privilege. The judge ordered this anonymous, undated memorandum disclosed. Then things got really interesting. The CIA moved the judge to reconsider his order on this memorandum, asserting that it had claimed, albeit obscurely, that this document was also withheld in its entirety under Exemptions 1 and 3 in order to protect national security and intelligence sources and methods. But before the court could act on the motion for reconsideration, the CIA rushed to court with a new revelation: the eleven-page memo, which dealt with the CIA/Mafia plots to kill Cuban Prime Minister Fidel Castro, matters exposed by the Church Committee in 1975, had been released nearly in full almost a decade earlier, by the CIA itself.

Case 4: In 1969, Harold Weisberg made a request for FBI records on the assassination of Dr. Martin Luther King, Jr. J. Edgar Hoover himself ordered that no response be made to this request. In 1975, when the amended FOIA became effective, Weisberg submitted a new request for King assassination records. He specifically included a request for crime scene photographs. After he filed suit, the FBI claimed that it did not have any crime scene photographs. This statement was false. Ultimately, the FBI released more than 150 crime scene photographs to Weisberg.

During the same case, Weisberg picked up indications that an

FBI supervisor named Long had kept a tickler on the King assassination. A tickler is a file containing extra copies of documents kept at hand so it can be immediately retrieved. The FBI first denied that such a tickler file had been kept. Then it claimed that it could not locate it. After a long period of resistance, the Justice Department finally located the Long tickler exactly where Weisberg had suggested they look for it. When finally located, most of the file had been gutted.

Weisberg's suit for the King assassination documents lasted 15 years. He obtained approximately 60,000 pages. If the same suit were filed today, I believe that he would get about one-fourth of what he obtained in the late 1970's and early 1980's.

These stories that I have related are unusual only because the requesters actually went to court to fight the CIA and FBI. Most requesters cannot afford the time or the money of litigating their FOIA requests against these agencies. You might be tempted to conclude from the absence of litigation that the FOIA is working just fine. The opposite is true. The FOIA has been severely damaged by the 1984 amendments eliminating access to CIA operational files and by the 1986 amendments to Exemption 7, which applies to law enforcement records, as well as by a string of decisions in the Supreme Court and the United States Court of Appeals for the District of Columbia which have greatly expanded the amount of material which can be withheld from the public.

Let me add that while it is important to have obtained the public pledges from CIA Director Gates and FBI Director Sessions

which you heard today, if you support release of the records, you must also ensure that you have the support of other agencies, including the Department of Defense, the Treasury Department, the State Department, and such divisions as the Secret Service and the National Security Agency.

I wish to caution that while I think that this legislation will result in greatly enriching our fund of knowledge about the Kennedy assassination and the official investigations of it, at least if modified along the lines I suggest in the attachment to this statement, I do not believe that there is likely to be any "smoking gun," which will "solve the case." Rather, this legislation must be defended on the ground that the American people have a right to the fullest possible disclosure so they can make of it what they will. It will take much time to read, analyze, and understand the information released. Whether it will lead to the resolution of any controversies which beset this subject remains to be seen, but it is a course which cannot be avoided. The American people want to know the details of their history, however painful and puzzling it may be, and that is their right.

The proposed legislation has both strengths and weaknesses. I am attaching to this statement a detailed discussion of the joint resolution which includes a number of recommendations for changes. To briefly summarize, the major provisions of the bill include: a definition of "assassination materials," the composition of the Review Board, and the standards for the postponement of the release of information. The standards for postponement are critical

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because they determine the amount of material which may be withheld.

Before discussing the limitations on the term "assassination material" as related to the assassination of President John F. Kennedy, I note that this section excludes records on the assassinations of Senator Robert F. Kennedy and Dr. Martin Luther King, Jr. The House Select Committee on Assassinations ("HSCA") conducted an extensive investigation on Dr. King's assassination and concluded that his murder probably involved a conspiracy. Public belief that Dr. King was killed as a result of a conspiracy and that this crime remains unsolved is widespread. The alleged assassin, James Earl Ray, denies that he shot Dr. King. Unless the importance of historical issues is to be determined by whether a movie has been made about them, there is no justification for excluding the King assassination records from this legislation.

The assassination of Senator Robert F. Kennedy is equally the subject of profound controversy. Recently, a group of distinguished citizens have submitted a lengthy petition to the Los Angeles County Grand Jury to investigate evidence that the Los Angeles Police Department engaged in "willful and corrupt misconduct" in its investigation of Senator Kennedy's assassination. In support of these charges, the group submitted more than 800 pages of exhibits, mainly derived from the Los Angeles Police Department's own files, which document its charges that L.A.P.D. destroyed crucial items of evidence, ignored material evidentiary leads, cannot account for important missing evidence,

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engaged in a cover-up of its failures, and failed to conduct a thorough investigation of the crime. The records of federal agencies and congressional committees relevant to Senator Kennedy's assassination should also be included in this legislation.

The term "assassination material" is broadly defined, but it falls short of ensuring that scholars will have all of the documents which they need in order to properly study the subject. It should include policy documents which provide the context of decisions in the Kennedy Administration which may shed light on the assassination. It should include, as it presently does, all documents obtained or created by any previous official investigation. It should include materials on those persons who have figured in previous official investigations: state, Federal or local. Because no one can predict in advance where new avenues of study may lead, or what they may produce, the definition should be flexible enough to provide scholars with those materials reasonable calculated to shed light on the assassination or its investigations. Finally, it should also include information records on agency operations and functions which may be relevant to the study of the assassination.

The current provision defining assassination materials contains an exemption for "personnel matters or other administrative affairs of a congressional committee, the Warren Commission, or any entity within the Executive Branch of Government." I strongly oppose this exclusion. The Warren Commission records on this subject have been publicly available

through the National Archives for many years and should not now be made secret. The work of prior commissions and committees is a perfectly legitimate subject, but it has been the subject of some secrecy which has impeded the public's right to know. In particular, the staff of the House Assassinations Committee, with the exception of its General Counsel and Staff Director, G. Robert Blakey, pledged an oath of secrecy about their work. Blakey has published a commercial book about the committee's work, and is quite public and outspoken about it. Because of the secrecy oath, others who are quite knowledgeable about the Committee's work have been silenced. The public has been denied their views and their information. In this regard, I would urge the insertion of an additional provision in this legislation which would rescind any secrecy oaths taken by the staffs of any previous congressional or executive branch commission or committee.

This provision would also be used to prohibit release of information regarding a very troubling incident in which the House Select Committee discovered that its most sensitive files on the Kennedy assassination had been rifled by a CIA liaison officer assigned to assist the committee. According to published accounts in the Washington Post, this officer, Regis T. Blahut, surreptitiously entered the safe reserved for physical evidence of President Kennedy's assassination, including autopsy photos, X-rays, and other articles, including the so-called "magic bullet" that wounded both Kennedy and Texas Governor John Connally. According to the Post, Blahut was given several polygraph

examinations. He was asked whether he did it, and according to one source, he flunked that. He was asked whether anyone had ordered him to do it, and he is said to have flunked that question too. Materials regarding incidents of this kind should be fully available to the public.

A second problem with this legislation is that is proposes to exclude from the Review Board anyone who has had "previous involvement with the investigation or inquiry relating to the assassination of President John F. Kennedy." I believe this is too broad and should be limited to involvement in prior "official" investigations. Having a panel of Kennedy assassination agnostics might have some idealistic allure, but the public is unlikely to be persuaded that the government intends to disclose all pertinent materials if the panel does not include experienced and knowledgeable Kennedy researchers.

A third and critically important area that needs refinement is the standards for postponement of disclosure. Particularly significant is the need to narrow the definition of the term "intelligence source" and the term "intelligence method." Virtually all information an intelligence agency document can be withheld under these terms. "Intelligence source" must be defined to make clear that it does not include dead sources who have been the subject of widespread publicity that is tantamount to official acknowledgement, and sources who are willing to have their identities disclosed, and sources who cannot reasonably be expected to suffer death or serious bodily harm if their identities are

disclosed. Similar restrictions must be put on the term "confidential source." With respect to intelligence methods, it must be made clear that this term does not include outmoded methods, methods which are known to the public or methods which may be commonly deduced. Nor should it include methods that are known to other hostile intelligence services.

New legislation is needed. Half measures will not do. If this legislation does succeed in substantially clearing the air, it does not convince the public that nothing of critical importance to our understanding has been withheld but for the very best of reasons, then public cynicism about government will continue to increase.

I ask that additional comments be placed in the record.

ANALYSIS AND COMMENTS

on S. J. Res. 282

Sec. 3. Definitions

(2) "Assassination material" is broadly defined but still may fall far short of the documents which scholars need in order to properly study the Kennedy assassination. In essence, the present definition limits "assassination materials" to those records which have figured in previous inquiries by Congressional committees or Executive Branch agencies or commissions. Since these entities may not have asked for all of the relevant records, and may in fact not have asked for records on some relevant subject areas, the definition of "assassination material" needs further refinement. It should be modified to indicate that "assassination material" includes any material which any member of the Assassination Materials Review Board ("AMRB") or any individual seeking release under the Freedom of Information Act ("the FOIA"), can plausibly contend may shed light on the assassination or any of its investigations.

The definition also contains two explicit exclusions. The first of these excludes material to the extent that it pertains "to personnel matters or other administrative affairs of a congressional committee, the Warren Commission, or any entity within the Executive Branch of the Government. . . ." This

language could be used to prohibit release of materials pertaining to Regis Blahut, the CIA employee suspected of tampering with autopsy materials pertaining to the Kennedy assassination.

The second exclusion relates to the autopsy materials donated by the Kennedy family to the National Archives. This assumes that the autopsy materials were those of the Kennedy family to give to the Archives. This legitimizes a bad precedent. The autopsy materials ought to be subject to public, not private, control. The remedy for abuse of autopsy materials should be a newly created right of legal action by family members rather than denial or public access.

Sec. 5. Assassination Materials Review Board

(b) Court of Appeals division shall appoint "5 distinguished and impartial private citizens, none of whom are presently employees of any branch of the Government and none of whom shall have had any previous involvement with any investigation or inquiry relating to the assassination of President John F. Kennedy, to serve as members of the Review Board."

Query: Is this language designed to exclude private citizens who have written or spoken critically of the official investigations of President Kennedy's assassinations? Or only those persons who participated in official investigations or inquiries? If it excludes the former, then it will be difficult to find individuals who are sufficiently knowledgeable about Kennedy assassination matters to make the judgments called for by the Joint Resolution (i.e., defining what materials are related to

the assassination and whether the public interest in disclosure outweigh other concerns). Additionally, without such persons on the Review Board, it may be difficult to persuade the public that all pertinent materials will be disclosed, thus undercutting the objective of restoring trust in government. A committee of distinguished citizens who know nothing about the subject is not likely to inspire trust.

Sec. 6. Grounds for Postponement of Disclosure

Subsection 1 states that disclosure may be postponed if its release would (A) reveal "an intelligence asset."

This must be qualified. It should only apply to living, covert intelligence agents. Furthermore, if material in the public domain identifies or suggests the identity of an intelligence agent, the presumption should be that such material shall be disclosed unless the agency which employed the agent can show by clear and convincing evidence that serious damage to the agent can reasonably be expected to result from disclosure.

Subsection 1 states that disclosure may be postponed if its release would (B) reveal "an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government. . . ."

This provision also must be modified. The first problem is that there is no limiting definition of "intelligence source of method." Under this proviso, it would be possible to withhold such "intelligence sources" as newspapers, libraries, law enforcement

agencies, etc., as well as the personnel affiliated with them. Research in a public library is an "intelligence method," and it, too, is no doubt currently utilized. A fortiori would this definition include the surveillance techniques employed at the Cuban and Soviet embassies in Mexico City.

The "intelligence source" definition should be limited to living sources in circumstances where disclosure could reasonably be expected to result in actual serious personal damage to the source. Where disclosure of the identity of the source will not cause serious actual damage to the current national defense or foreign policy interests of the United States or where the identity of the source has become publicly known or is likely to have become known to any hostile or formerly hostile foreign power or an agency thereof, it should be released.

"Intelligence methods" must also be modified so that it applies only to methods that are unknown to the public or to foreign intelligence agencies.

Subsection 1 states that disclosure maybe postponed if its release would (C) reveal "any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States; and the threat to the military defense or conduct of foreign relations of the Unites States posed by its disclosure is of such gravity that it outweigh any public interest in its disclosure.

The chief problem with this provision is that there is no standard for what constitutes a "public interest" of sufficient

moment to outweigh any of the putative threats. Is the general interest in the fullest possible disclosure a public interest which may be considered, or must a showing of public interest in the substantive content of the material at issue be shown?

Subsection 2 provides that invasion of the privacy of a living person is a grounds for postponement of disclosure "if that invasion of privacy is so substantial that it outweigh any public interest in its disclosure."

This exemption contains a phrase stating that it applies "whether the person is identified in the material or not." This phrase should be stricken. With this phrase included this provision is significantly less liberal than current FOIA exemption 6, which covers only those invasions which result from the actual production of the materials themselves. Additionally, some content needs to be given to the invasion of privacy concept. One limitation would be that it must cause an actual as opposed to a theoretical invasion of privacy. A second that it relates only to intimate personal matters the disclosure of which would be likely to have profound adverse impact on an individual.

Subsection 3 states that disclosure may be postponed if its release would constitute "a substantial and unjustified violation of an understanding of confidentiality between a Government agent and a witness or a foreign government. . . ."

This provision needs to be amended to include only those promises of confidentiality--either to a witness or a foreign government--made in writing. Among the reasons for this are the

fact that (1) if the promise of confidentiality is not required to have been made in writing, then there is seldom any effective means to counter the agency's claim of confidentiality and the agency wins by default; and (2) the agency's claim of confidentiality frequently reflects not the desire of the witness but its own desire for secrecy.

This provision needs to be amended to make it clear that it does not authorize withholding of the identify of, or information provided by, a deceased witness. Secondly, there should also be some time limitation on any understanding of confidentiality made with a foreign government. And perhaps there should be a requirement that the foreign government officially object to each such disclosure in writing.

Additionally, it should be made clear, either in the text or in the legislative history, that it is not a "substantial and unjustified violation of a promise of confidentiality to disclose information supplied by a witness if the identity of the witness can be concealed.

Section 8. Determinations by the Review Board

Subsection (g) provides that any decision of the AMRB that a record is not assassination material or that disclosure should be postponed "shall not be subject to judicial review."

Why not? Likely to pose less of a burden and expense than litigation under the FOIA.

Subsection (h)(2) provides that the President may certify that material "qualifies for postponement of disclosure pursuant to

section 6, in which case release of the material shall be postponed, and this decision shall not be subject to judicial review."

There is no limitation on the duration of postponement by the President. Suggest that the maximum period of time be that portion of the President's term which remains.

Section 11. Rules of Construction

Subsection (b) provides that nothing in the Joint Resolution shall be construed to eliminate any right to file requests with any Executive agency other than the Review Board or seek judicial review of the decisions of such agencies under the FOIA.

One problem here is that transferring all agency records to the Review Board may mean that they are no longer "agency records" within the meaning of the FOIA."

A second problem is that this provision eliminates the AMBR from FOIA coverage. This sets a bad precedent and sets up circumstances of highest irony in which an agency whose overriding mission is openness will itself operate in secrecy.

A provision should be added here stating that in any FOIA action involving assassination materials the court is to apply the standards for postponement set forth in the Assassination Materials Disclosure Act in lieu of the exemptions provided in the FOIA.

Additional Notes

It may be a good idea to expressly mention the Rockefeller Commission as subject to the Act.

Judge John R. Tunheim
Chairman
Assassination Records Review Board

Prepared Testimony In Support of
H.R. 1553,
To amend the President John F. Kennedy Assassination Records Collection Act of 1992
to extend the authorization of the Assassination Records Review Board
until September 30, 1998.

Before the
National Security, International Affairs and Criminal Justice Subcommittee,
House Government Reform and Oversight Committee

June 4, 1997

I. Introduction

Mr. Chairman and Members of the Subcommittee, I would like to thank you for the opportunity to testify on behalf of the Assassination Records Review Board in support of H.R. 1553, which would extend the authorization of the Review Board for one final year. The Board acknowledges that all of the issues surrounding the assassination of President Kennedy will likely never be fully resolved, however, this additional time will allow us to complete our work, including the review and public release of critical FBI and CIA records, submit a comprehensive and complete final report to the Congress and the President, and make available to the American public as much information as possible on the assassination of President John F. Kennedy.

I would also like to take this opportunity to thank Chairman Burton for introducing H.R. 1553, and Congressmen Waxman and Stokes for cosponsoring this bill. These Members have exhibited an admirable bipartisan spirit and an understanding that we as a government, and as a nation, must bring closure to a sad chapter of our history, and that we must seize this opportunity to do it now. In addition, we would like to express our appreciation to Chairman Hastert for chairing this hearing today. It provides an opportunity to explain what the Review Board has accomplished to date and discuss how we could finish our work in Fiscal Year 1998, if given the opportunity.

Please allow me to introduce the other members of the Review Board with whom I have had the professional honor and personal pleasure to work: Dr. Henry F. Graff, Professor Emeritus of History, Columbia University; Dr. Kermit L. Hall, Dean, College of Humanities, and Professor of History and Law, The Ohio State University; Dr. William L. Joyce, Associate University Librarian for Rare Books and Special Collections, Princeton University; and Dr. Anna K. Nelson, Distinguished Adjunct Historian in

Residence, The American University. We have been honored to engage in this important effort to make the history of the Kennedy assassination available to the American public and I am pleased to be here today to testify before this Subcommittee and answer any of your questions.

I would also like to describe briefly the professional staff that we are fortunate to have hired. The Executive Director is Dr. David G. Marwell, a professional historian who gained vast experience dealing with large numbers of important historical documents with the Office of Special Investigations at the Department of Justice and later as the Director of the Berlin Document Center. He leads a staff of 28 full-time employees, who have varied backgrounds as historians, lawyers, analysts, investigators, and administrators. The members of the staff have approached their unique task with seriousness of purpose, creativity, professionalism, and competence, and have assisted us in shedding new light on the assassination through the release of thousands of Federal Government records, and the acquisition of records in private hands and local governments that were not previously available to the American public. I believe that we assembled exactly the type of professional and diversified staff that Congress envisioned would be necessary to accomplish this difficult assignment.

II. Accomplishments to Date

As I know you are aware, the Review Board was created by The President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act) as an independent Federal agency to oversee the identification and release of records related to the assassination of President Kennedy. I know that certain members of this subcommittee played a role in crafting and passing the JFK Act—a unique piece of legislation designed to remove doubt and speculation about the content of government records related to the assassination of President Kennedy. As a result of these lingering suspicions, Congress determined that an independent board was the most effective and efficient vehicle to make all assassination records available to the public.

The Review Board has accomplished much since we began releasing previously secret records in June of 1995. The Board has acted to transfer more than 14,000 documents to the President John F. Kennedy Assassination Records Collection (JFK Collection) at the National Archives and Records Administration. We would not have been successful in our efforts without the significant assistance of the National Archives. The JFK Collection currently totals approximately 3.7 million pages and is used extensively by researchers from all over the United States.

By the end of Fiscal Year 1997, the Review Board will have reviewed and processed nearly all of the assassination records that have been identified by the more than 30 different government offices believed to be in possession of relevant records, with the

important exception of the FBI and the CIA. I will elaborate on the status of records held by these two agencies later. The overwhelming majority of previously redacted information will have been made public by the Review Board.

III. <u>Release of Government Records Related to the Assassination</u>

Before discussing what we will accomplish with one final year, I would like to highlight for the Members of the Subcommittee some of the important records that the Board has made public. They include:

- **Thousands of CIA documents on Lee Harvey Oswald and the assassination of President Kennedy that made up the CIA's Oswald File and detail the agency's investigative activities following the assassination;**

- **Thousands of once-secret records from the investigation by the House Select Committee on Assassinations, chaired by Congressman Stokes, including the controversial Staff Report on Oswald's trip to Mexico City;**

- **Thousands of records from the FBI's core and related assassination files that document the FBI's interest in Oswald from 1959-63, after he had defected to the Soviet Union, three years before the assassination; and**

- **The extensive FBI files on its investigation of the assassination.**

The important work in which the Review Board has been engaged can be best and most graphically demonstrated by showing you the "before" and "after" versions of one of the pre-assassination FBI documents to which I just referred and that the Board has released to the public. Prior to the Review Board's review, this FBI document (JFK Collection Record Number: 124-10023-10236, Attachment Number 1) was available to the public as you see it on the left. As you can see, it is heavily redacted. The only information that was not secret was the date of the memorandum, "October 12, 1960," that it was to the "Director, FBI," from "Legat, Paris" (the FBI representative in Paris), that the subject was "Lee Harvey Oswald, Internal Security," and that it had to do with a "Paris letter 9/27/60." The rest of the text was blacked out. Obviously, this version of the document left room for a great deal of speculation among historians and researchers regarding what was underneath the black ink on this document with the provocative subject title.

The Review Board aggressively pursued the release of the redacted information in this document and several others that relate to the FBI's interest in Oswald before the assassination. After protracted negotiations with the FBI, an initial FBI appeal to the White House in an effort to keep the document secret, and a direct appeal to the Swiss

government, we were able to release the information. The unredacted memorandum shows that the Swiss Federal Police had been enlisted by the FBI to try to locate Oswald and to determine whether or not he had enrolled at a school in Switzerland. Now the public is able to see the document in full and judge its importance. In its redacted state, the document could have meant anything that a researcher's imagination and speculation could invent. In its released form, it must be analyzed for what it says.

IV. Identification and Location of Additional Assassination Records

One of the most important, most difficult, and most time-consuming responsibilities of the Review Board is to identify and locate additional records that are relevant to the assassination. This is a task that to some degree must logically come later in the process, after the Review Board has gained a full understanding of the records that have already been identified. Although the Review Board has made a significant number of requests for additional records and information, some of which I would like to outline, much remains to be done before it can be confident that it has completed this responsibility.

I would like to highlight some of our efforts to identify and locate additional assassination records. Some examples:

* Medical Records Inquiry. The Review Board has several ongoing efforts to identify and locate assassination records involving medical issues. As with any homicide, the medical records are among the most important pieces of evidence. As part of its attempt to ensure that the medical records are as complete as possible, the Review Board staff has deposed the principal pathologists involved in President Kennedy's autopsy, as well as other individuals who had knowledge of the autopsy and related photographic records.

* Identification and Location of Additional FBI Records and Information. The Review Board has continued its efforts to locate additional FBI assassination records by making several requests for records and information. The FBI has assisted in this effort by giving the Review Board members access to requested files. The JFK Task Force at the FBI has, on the whole, been extremely cooperative and helpful to the Board and has provided the requested information.

* Identification and Location of Additional CIA Records and Information. The Review Board has initiated a number of requests to the CIA for additional information and records. The Review Board expects that these requests will be promptly and fully satisfied during the upcoming year.

* <u>Identification and Location of Additional Secret Service Records and Information</u>. Time consuming and careful review of Secret Service activities by the Review Board produced a series of requests for additional records and information that, in turn, led to the identification of additional relevant assassination records. For example, in response to the Review Board's first eight requests for additional information, the Secret Service has submitted more than 1,500 pages of material.

* <u>Identification and Location of Additional Military Records and Information</u>. The Department of Defense (including its many components and the military services) (collectively "DOD"), identified few assassination records on its own initiative. DOD has nevertheless been cooperative with the efforts of the Review Board to locate assassination records. When such records have been located, DOD has been willing to release the records with few redactions.

  Additional work would be required in our last year to ensure that all assassination records in the military archives have been made a part of the JFK Collection. Fortunately, the diligent efforts of the ARRB staff have set the stage for accomplishing this task.

V. <u>Release of Private and Local Records</u>

In addition to the release of records in the Federal Government's vast files, and consistent with the Board's mandate to make the historical record of the assassination as complete as possible, we have been aggressive in identifying and acquiring significant assassination-related records in the possession of private citizens and local governments, including:

* The original personal papers of Warren Commission Chief Counsel J. Lee Rankin that give further insight into the operations of the Commission;

* Copies of the official records of New Orleans District Attorney Jim Garrison's investigation of the assassination;

* The original papers of New Orleans attorney Edward Wegmann, from his work as a member of the legal team that successfully defended Clay Shaw in 1969 against a charge of conspiracy to kill President Kennedy.

* Copies of records from the Metropolitan Crime Commission of New Orleans, including records on District Attorney Garrison's investigation and prosecution of Clay Shaw and records regarding New Orleans organized crime figures;

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* Long-lost films taken in Dallas on November 22, 1963, that the public had never seen and that shed new light on the events of that day; and

* Private collections of records from individuals including Warren Commission attorney Wesley Liebler, author David Lifton, FBI Special Agent Hosty, Attorney Frank Ragano, as well as others.

I am also pleased to announce today that the Review Board has just acquired the original personal papers of Clay Shaw, the late New Orleans businessman who is the only person ever tried in connection with the assassination of President Kennedy. Shaw was acquitted by a jury in 1969 after being charged as part of District Attorney Garrison's investigation. The Shaw papers will surely add another dimension to this particular chapter of the assassination story.

All of these records will enrich the historical record of the assassination for future generations of Americans. Once these records are processed and described by the National Archives, they will be available for research.

VI. <u>The Need For Additional Time</u>

Despite our best efforts and significant accomplishments, some of which I have outlined, the Review Board will not be able to complete its work within the original three-year timetable set by Congress for the following reasons:

* First, the authors of the original legislation believed that our task would take three years. That estimate was based on the best available information at the time, but the legislation established an unprecedented process. There was no way of knowing the problems of scale and complexity that the Board would encounter, nor was there any way to factor in the comprehensive approach we have taken in fulfilling our mandate.

* Second, the Board was not appointed until 18 months after the legislation was signed into law. As a result, without the guidance of the Board, Federal agencies initially defined for themselves the universe of records that should be processed under The Act and to speculate about the kind of evidence that would be needed to sustain the redaction of assassination-related information. Once the Board was in place, agencies needed to redo a considerable amount of work. In fact, many agencies have yet to complete their review and the Board is still seeking their compliance.

* Third, our enabling legislation imposed several restrictions on the manner in which the Board could operate. Unlike other temporary agencies, the Board

could not hire or detail experienced federal employees, but rather had to hire new employees who had to undergo background investigations and be cleared at the Top Secret level. Locating and renovating space that was suitable for the storage of classified materials was required. As a result, the Board could not begin an effective review of records until the third quarter of our first year.

We are pleased and proud that the Review Board and staff have been able to overcome these obstacles, and that we have developed an efficient and effective process for the review of records. All involved in this process want to see that the job is done, and do not want to cease now with a reasonable conclusion in sight. We want to finish the job we began, and with one additional year we can.

VII. The Job Ahead

The additional year of operations will permit the Review Board to finish its task by completing several major areas of our work. Please be assured that these are identifiable projects that are critical to ensuring that the JFK Collection is as complete as possible, that relevant Federal agencies have been held accountable, and that all that we have done is documented in our final report. The Board would focus in our final year on the following:

* CIA Sequestered Collection. The Review Board has completed its review of the Oswald "201 file," the file created and maintained by the CIA on Oswald and the assassination. The Review Board is now faced with the task of reviewing the agency's "Sequestered Collection," the large collection of files that was assembled by the CIA in response to requests made by the House Select Committee on Assassinations, chaired by Congressman Stokes, in the late 1970's. These records find their relevance to the assassination defined in part by the course of the HSCA investigation. The Sequestered Collection originally consisted of 63 boxes of CIA- and HSCA-originated records as well as 72 reels of microfilm. Unfortunately, these records are in a confused order, poorly described, and are replete with duplicates. Some of these records are clearly of great significance, some are of only marginal interest, and the relevance of others cannot be identified.

* FBI Sequestered Collection. The FBI divides its assassination records into two general categories. The first is the "Core and Related Files," consisting of nearly 600,000 pages of files collected in the course of the massive FBI investigation into the assassination. The Review Board will complete its review of this significant collection by the end of FY 1997. The second, which the FBI refers to as its "HSCA records," is a large collection of records that were identified as being of interest to the HSCA and which remain to be reviewed by the Board. Like the

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CIA's Sequestered Collection, this voluminous body of records (approximately 280,000 pages) ranges widely in relevance to the assassination.

* <u>The Records of Some Federal Agencies and Congressional Committees</u>. Additional time will allow the Board to finish its work with several agencies, including the Secret Service, the National Security Agency, and Congressional Committees, including the Senate Intelligence Committee.

* <u>Search for Additional Records</u>. With one more year of operations, the Board's search for additional records held by Federal agencies, private individuals, and local governments would be concluded with greater confidence. Some of these records have been identified, but not yet acquired by the Board.

* <u>Federal Agency Compliance</u>. In November 1996, the Review Board initiated a compliance program to ensure that Federal agencies have fully cooperated with the Board in discharging its responsibility of assuring Congress and the American public that the goals of the JFK Act have been accomplished to the greatest possible extent. The requests to document compliance with the JFK Act were sent to 27 U.S. government agencies and departments to confirm that the U.S. government has identified, located, and released all records relating to the assassination of President Kennedy. The agencies' statements of compliance will be included in the Review Board's final report to the Congress. The one-year extension will ensure that the compliance program is completed and fully documented in the final report.

It is important for the Review Board to complete these major projects. The Board believes that the completion of the task outlined above, the inclusion of these important records in the JFK Collection, and the documentation of Federal agency compliance as part of the final report will mark an appropriate point at which to conclude the Board's work. We are confident that all that remains for the Board can be accomplished in an additional year.

VIII. <u>An Approach to the Review of the Remaining CIA and FBI Records</u>

It is clear to the members of the Review Board that there is much work to be done. The review of the remaining CIA and FBI records is a cumbersome and complicated task. However, the Board and staff have the benefit of our experience to date that sets the stage for an efficient and effective review of the remaining records. I would like to briefly describe our early experiences reviewing records and how the past two years set a firm foundation for the future and would work to our advantage in our last year.

Our review of records in the early months was slowed by the complexities of the issues raised in the records. The unprecedented new standards of the JFK Act, which go far beyond those established under the Freedom of Information Act, required a time-consuming early phase.

At first, the review process proceeded slowly and the agencies were afforded ample opportunity to present their evidence. Over time, the Review Board began to standardize its interpretation of the relevant section of the JFK Act and the issues raised in the various documents. Now that the Review Board and the agencies are familiar with the rigorous demands of the JFK Act, the process has accelerated. In a progressively increasing number of cases, records that initially contained proposed postponements can be released through a "consent" process. In this consent process, the ARRB staff notifies an agency that its proposed postponements are not likely to be approved by the Review Board and the agency thereupon voluntarily consents to the release of the information.

In our review of the FBI's "Core and Related Files" and the CIA's "Oswald 201 File," the records that have been the focus of our attention to date, we subjected every requested redaction to a rigorous test: did the evidence of the harm that would result from the release of the information outweigh the public interest in the information?

In considering our review of the CIA and FBI "Sequestered Collections," the Board recognized that it needed to develop a different approach, one that would take into account the varied degree of relevance of individual records to the assassination. Only in this way could the Board ensure that it would appropriately expend its resources in its last year. As a first step, the Board carefully analyzed each collection in order to determine what priority should be assigned to the category of records. In addition, the Board developed a set of guidelines for the review of these records which recognized that some categories of records did not require the intensive word-by-word review that had been the rule for the core collections that have been the subject of the Board's attention to date. The development of these guidelines began with the August 6, 1996 Board public hearing and culminated in their adoption at the October 16, 1996 Board meeting. The ARRB staff will distinguish between records whose relevance to the assassination is clear and those not believed to be relevant (or "NBR"). Applying these new standards will permit the ARRB staff to identify and review the most significant remaining records in order of priority.

These detailed guidelines will reduce the loss of valuable Review Board and ARRB staff time expended to review, on a word-by-word basis, those documents that have a remote relationship, at best, to the Kennedy assassination. Those documents that are identified as relevant to the assassination will continue to be reviewed word-by-word. These standards of relevance are designed to ensure that the greatest number of true

assassination records is properly identified, reviewed, and made public in the JFK Collection at the National Archives.

The fruits of our labor from the first three years would be realized in our last year, one in which we would be reviewing some of the most difficult records, and potentially most important records, but with the benefit of our invaluable experience. I am happy to report that we have received assurances from the FBI and CIA that they will work with us in a final year to make sure that the necessary resources are applied so that our task can be completed.

IX. Conclusion

In making our recommendation for a one-year extension, we, the members of the Review Board, are fully cognizant of the difficulties inherent in extending a temporary commission. We are aware of the concern that temporary bodies may have a self-preserving and self-perpetuating instinct, and want to assure you in the clearest and most unambiguous manner that our recommendation is motivated strictly by our desire to complete the job. My colleagues and I were appointed as private citizens and have many competing claims on our time and energy. It is our collective conviction that the additional time is necessary and our sincerest commitment that we will complete our task by the end of Fiscal Year 1998, if given the means.

I would like to note that, as you may be aware, the Administration is supportive of the one-year extension for the Review Board and has submitted an FY 1998 budget amendment to allow us to complete our work, close out our operation, and submit our final report.

Since the Review Board began this effort three years ago, we have witnessed the widespread and passionate interest that the American public has in the assassination of President Kennedy. We have received thousands of letters, telephone calls, faxes and e-mail messages from individuals who care deeply about our history. They come from all walks of life, from all over the country, and are of all ages. Their interest is of varying degrees and they do not all agree on what happened in Dallas on November 22, 1963. However, they do agree that the public has the right to see the files on the assassination.

I believe that what the Review Board is all about can be summed up in a letter we received from a man from California just last week. The author is not a professional historian, not a student working on a paper for a history class, but simply a private citizen interested in learning about this tragic historical event. He wrote the following:

"In my humble opinion, it appears that the ARRB is having a healing effect

upon the American public, who may be coming to realize that there may be closure in sight (in our lifetimes) with regard to the JFK assassination."

These words capture why the Review Board was created by the Congress and why we hope that the Review Board will have the additional year to complete our task.

The Assassination Records Review Board was conceived as a means of eliminating uncertainty and speculation about the contents of government files relating to the assassination of President Kennedy. We, the members of the Board, believe that a premature termination of the Review Board would surely generate intensified doubts within the general public about the commitment of Congress to release all information that relates to the assassination of President Kennedy, as well as renewed speculation about the conduct of our government and its institutions and personnel. If appropriate closure is not reached now, the identical issues will likely have to be addressed again in the future—at even greater cost. The additional year that we recommend will allow for a confident conclusion of this important task. sion of this important task.

Mr. Chairman, and Members of the Subcommittee, on behalf of the members of the Assassination Records Review Board, I thank you for allowing us this opportunity to discuss our work and our future. We urge you to favorably report H.R. 1553. I would be happy to answer any questions that the members of the Subcommittee may have for me. The Board and staff stand ready to provide the Subcommittee with any additional information that may be required. Thank you.

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SUBJECT: ASSASSINATIONS RECORDS REVIEW BOARD REAUTHORIZATION
CHAIRED BY REPRESENTATIVE DENNIS HASTERT (R-IL)
2154 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC

BODY:

REP. HASTERT: The Subcommittee on National Security, International Affairs and Criminal Justice will come to order. This hearing will focus on a very important piece of legislation, HR 1553, the John F. Kennedy Assassination Records Review Board Reauthorization Act. This bill was introduced by Chairman Dan Burton on May 8, 1997 and included in original cosponsors ranking minority member Henry Waxman and Congressman Louis Stokes, our first witness for today, also who chaired the House Select Committee on Assassinations.

In 1992, 30 years after the assassination, nearly one million pages of records compiled by official investigations still had been not made public. Congress decided to set up a process for reviewing and releasing to the public the records surrounding the Kennedy assassination. The result was that on October 26, 1992, President Bush signed into law Public Law 102-526, the President John F. Kennedy Assassination Records Collection Act of 1992.

The original act provided a three-year timetable for the review board to complete its work. Unfortunately, extensive delays in the appointment of board members delayed the review board's work from the very beginning. In 1994, the Congress extended the 1992 law's termination date for one year, until September 30th, 1996. The review board subsequently exercised its authority into the statute to continue operating for one additional year.

The review process has proved to be more complex and time- consuming than

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anticipated. And although we believe that Congress should not indefinitely continue funding federal entities that were intended to be temporary, Chairman Burton and this subcommittee support the request for a one-year extension of the board's reauthorization. I believe that by releasing these documents to the public we serve an important public right to know and advance the cause of total accountability to the people of this country.

At this time I would like to recognize the gentleman from Wisconsin, Mr. Barrett.

REP. THOMAS M. BARRETT (D-WI): Thank you, Mr. Chairman. I'm honored to welcome
my esteemed colleague, Representative Louis Stokes, to testify before this subcommittee. We are fortunate to be able to draw on your experience in this area.

Over 30 years ago this country was shocked by the assassination of President Kennedy in a way that it had not been shocked since the bombing of Pearl Harbor or the bombing or Hiroshima. Yet today we are still prying papers out of the government about that assassination.

The legislation that created the Assassination Review Board broke new ground by establishing the principle that there should be a presumption of public access to government information. That legislation was necessary because administration after administration had failed to release documents. That should not be. The Assassination Review Board has released millions of pages that could have otherwise remained locked in government file drawers. We are here today to extend the authorization of this board because the process of making government information public has been more complex and time-consuming than anticipated. I am not criticizing the work of the board or the dedication of its members. I am, however, critical of the fact that we are still fighting with our government to allow public access to government documents. Congress has passed laws and resolutions reiterating the principles of public access that were laid down when this country was founded. Administration after administration has worked to thwart that access. I applaud President Clinton for his efforts to declassify xdocuments, but we need to do much more.

I hope that every employee at the Office of Management and Budget, and every agency in the government will pay attention to what this board has accomplished. It is the refusal to allow public access that breeds suspicion of the government. It is the thwarting of public access that causes the public to mistrust government officials. If we are to turn the tide of mistrust and suspicion, it will be done by opening the doors of access. Today is one step in that process, but there is much more work to be done.

Thank you.

REP. HASTERT: Are there any other members wishing to make an opening statement? If not, our first witness this morning is fellow Congressman Lou Stokes, who served as the chairman of the House Select Committee on Assassinations from 1976 to 1979, and is a cosponsor of this important bill.

And, Mr. Stokes, we want to say welcome, and thank you for your fine work in this area. And please proceed with your opening statement.

REP. LOUIS STOKES (D-OH): Thank you very much, Mr. Chairman. Mr. Barrett, Mr. Turner, Mr. LaTourette.

Mr. Chairman, I'd like to submit my written testimony for the record, and if I may, I'd like to just summarize my testimony.

REP. HASTERT: Without objection.

REP. STOKES: Thank you.

It seems, Mr. Chairman, it was not as long as it is, but actually it's been 20 years; it was in 1977 when I was appointed as chairman of the House Select Committee on Assassinations. We were authorized at that time and directed to complete an investigation surrounding the assassination and the death of President John F. Kennedy. We completed, as you've already stated, our

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investigation in 1979. And on March 28th of that year, we filed our final report. In addition to it, 12 volumes of evidentiary material, printed by the Government Printing Office, was made available to the American public. In addition to this, we conducted 18 days of public hearings and an additional two days of public policy hearings.

Prior to the committee running out of both time and money, we had released everything that we had the time and resources to release. All of our other records were placed in the National Archives, under a House of Representatives rule which existed at that time, Rule 36, requiring such unpublished records routinely to be sealed for 30 to 50 years. The records of our committee relative to this investigation consisted of 935 boxes, which we turned over to the National Archives. Then, over the years, a considerable public debate about these records has ensued, including accusations that these records, if released, would contain evidence of a government cover-up, or complicity of government agencies in the assassination of President Kennedy.

A great deal of this was fueled in 1992 by a movie entitled "JFK." That movie contained many distortions of the facts and circumstances surrounding the death of our president. As a result of that movie, my office was deluged with thousands of letters and telegrams by Americans calling for the release of these sealed files.

As a member of Congress, and a former chairman of that committee, I deemed it important not to have the good work of our committee impugned by such baseless accusations. Our committee had attempted to conduct its investigation into the assassination of the president, and to present the results of that investigation to the Congress and to the American people in a thorough and dignified manner in keeping with the memory of this great president.

Consequently, in 1992, I introduced, and the House and Senate passed, PL 102-526, a bill entitled The President John F. Kennedy Assassination Records Collection Act of 1992. That law created the Assassination Records Review Board, which mandated and authorized that board to identify, secure, and make available all records related to the assassination of President Kennedy. It was our intention, Mr. Chairman, that everything that could be released from every agency, every court record, anywhere they existed -- that those records be released to the American people.

Under the law, the board had until October 1, 1996, to fulfill its mandate, plus an additional year, at the board's discretion.

We were very fortunate to have a very distinguished panel appointed. This panel was appointed by President Clinton 18 months after the law was enacted here by the Congress -- a considerable delay in the appointment of this panel. But we were very fortunate to have persons such as Chairman Tunheim, Dr. Henry Graff, Dr. Kermit Hall, Dr. William Joyce, Dr. Anna Nelson, and an outstanding executive director, David Marwell.

Under this panel, they have now released more than 10,000 previously secret government documents.

They have released a report, which I would urge all the members of the committee to read, if they have an opportunity, because I think you will see the extensive amount of work in which they have been involved.

They now need one additional final year in order to complete their work. Their work during this period of time will be primarily to secure the release of documents from the CIA and the FBI. Those are the two main agencies left from which they still have a considerable number of documents to be released.

Mr. Chairman, in closing I think that it's important that we complete this work in an orderly manner with full and complete disclosure to the American people, that they will feel that they know everything that their government knows about

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the assassination of their president. And I would urge the support and passage of this legislation sponsored by Chairman Burton, of which I am one of the original co-sponsors.

I'd be pleased to answer any questions.

REP. HASTERT: Thank you, Chairman – or, Mr. Stokes. And I really appreciate the work that you've done here. I have just two brief questions. Actually, three. Do you believe that the Ford Review Board is up and running smoothly now?

REP. STOKES: Absolutely. In spite of the delay of 18 months they have done just a yeoman's amount of work. It's just been almost incomparable to realize how much they have done. And to their credit, they feel that if given just this one additional year that they will complete the work.

REP. HASTERT: And do you believe that this process is consistent with the goals of your original legislation in 1992?

REP. STOKES: Yes, I do, Mr. Chairman.

REP. HASTERT: And then you are confident, as you said before, that the review board can finish its task by September 30th, 1998.
REP. STOKES: I am just very confident that -- in projecting the fact that they can do this work with one year. And when they say themselves as they will say to you when they appear, this'll be one final year.
REP. HASTERT: Thank you very much, and thank you for your testimony.
REP. STOKES: Thank you, Mr. Chairman.
REP. HASTERT: The gentleman from Wisconsin.
REP. BARRETT: Thank you, Mr. Chairman.
I don't have a lot of questions, either. I just want to compliment you, Congressman Stokes, for the fine job that you have done.
REP. STOKES: Thank you.
REP. BARRETT: And just one question. Do you think in the unfortunate and hopefully unlikely scenario that there are future assassinations in the future that this was a good way to approach this problem, the panel that you served? Do you think that you have accomplished what you intended to accomplish?
REP. STOKES: Mr. Barrett, at the time that we undertook this panel and Congress passed the act to create this panel, 85 percent of the American people believed that someone other than Lee Harvey Oswald had participated in the assassination of President Kennedy. A national poll had told us that. There were boundless rumors and myths. People were writing numerous books and things of that sort. And as a consequence of it, I think that putting this panel together and permitting this type of investigation I think was very helpful. I think it allayed many of the rumors and myths that grew up and abounded around the assassination of our president.
However, I don't think that it put to bed everything. We uncovered many things. For instance, we pointed up many of the things that the Warren Commission had not done properly. And we were able to destroy many of the myths, such as the umbrella man theory and things of that sort. But we couldn't put everything to bed. We had begun that investigation 15 years after the assassination of the president. I think had we been given this type of investigation immediately after it had occurred, it would have been a different result. But many of the witnesses had died. Evidence had disappeared. As you can see now, there were materials which we were not able to get even within that two-year period before we went out of existence.
And so as a consequence of it, I think we did an outstanding job. No one has ever been able to refute any of the work that we did. No one has been able thus far to say anything was ever covered up from the American people. And so to that degree, I think that it performed a good service for the American people.

REP. HASTERT: Okay, thank you very much.
The gentleman from Ohio.
REP. STEVEN LATOURETTE (R-OH): Thank you, Mr. Chairman. Mr. Chairman, I want to
thank you for having this hearing today and for also expediting the markup on 1553, and give praise to the co- sponsors, our chairman, Mr. Burton, Mr. Waxman, and also to Congressman Stokes.
The editorial comment I would make is I'm always amazed each succeeding day that I serve in Congress at the rich history that a number of our colleagues have, and to now have our fine colleague from Ohio, Congressman Stokes from Cleveland, here and talk about his previous work on the House Select Committee on Assassinations. Although many members in the House remember his service, I would venture to say there are a number of people back home that don't know all of the things that you've done during your many years of service to this Congress and this country.
Just as an example, the other day I found out -- and I don't know if you're a

lawyer or not, Mr. Chairman, but I found out that Congressman Stokes -- well, you're lucky you're not a lawyer, but I am, and I'm proud to be a lawyer.
I found out that Congressman Stokes was responsible for a ruling called Terry versus Ohio, and you might have heard of a "Terry Frisk and Search," and I didn't know that till the other day, that Congressman Stokes had a hand in that, and so, again, we find Congressman Stokes showing up again, sharing his expertise with the country.
Lou, the one question I would have, deals with, in both your written testimony, and then also your observations to Congressman Baird's question. You talked about the "JFK" movie, and all of the rumors and innuendoes and the public polls. And you still run into people -- as I'm sure -- I still run into people that aren't convinced that Lee Harvey Oswald acted alone on that November day in Dallas.
And part of it has to do, I think, with, after your commission met, and now the legislation in '92, and a little delay in getting everybody in place in the review board. Do you think it was necessary, after you've reviewed the documents in this case, that we waited, as a government, 34 years to make these documents available? Was there something impinging upon the national security that you found or discovered that made it necessary for the government to wait 34 full years before releasing this information, and hopefully dispelling some of those rumors?
REP. STOKES: Thank you very much, Mr. LaTourette, firstly for your nice remarks. But it's a good question, because not many people realize that this was not -- when we sealed these records for the period 30 to 50 years, this was not done because of anything relative to this particular investigation. That was a House rule in existence at that time, that applied to any committee that, when it completed its work and filed its final report, if they had documents which had not been released publicly, under that House rule, they had to be sealed for 30 to 50 years. The same applied to the other part of that investigation which we conducted, which was to investigate the assassination of Dr. Martin Luther King Jr., which was a companion part of our investigation. So that applied to that one also.
But as a result of it, in compliance with the House rule, it just sort of sat there until things were stirred up by that "JFK" movie and it sort of brought things to the head.
REP. LATOURETTE: Okay. The principles behind your '92 legislation, the Assassination Records Collection Act -- obviously, now we collect records differently than we did before. A lot of them are electronically stored. Do you think that we can use that act as a vehicle, should another tragedy -- God forbid we should ever have such another tragedy in this country, but should

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another tragedy such as this occur, could we use the lessons learned in the model of this review board to prevent the significant time lag between the date of event and the eventual release of documents for public review?

REP. STOKES: I would hope, Mr. LaTourette, that we have learned some lessons. Firstly, here in the Congress we'd no longer have such a rule in effect, and that will help us, I think, tremendously.

But also, I think, by the agencies now working with a review panel of this sort and realizing that many of the type of documents which they will cite to you in their testimony -- for instance, there's a very interesting document that they will talk about, where the whole page, with the exception of just the date and the name of a country -- everything was redacted. And under their work, that whole page has been released, and everyone can read that.

What you do by that is that you're to allay all the suspicion as to what really has been redacted and people can really see. And then you can't have the kind of rumors and myths that grow up around it.

And I think and hope that in the event of such an occurrence in the future -- which all of us hope would never occur -- that our agencies will realize that this has been a good example of how we could allay some of the fears and suspicions that the American people have around the manner in which we conduct this type of thing.
REP. LATOURETTE: Thank you very much, Congressman Stokes, for your expertise --
REP. STOKES: Thank you.
REP. LATOURETTE: -- and thank you, Mr. Chairman, for yielding.

REP. HASTERT: Thank you.
And at this time I recognize the gentleman from Texas.
REP. JIM TURNER (D-TX): Thank you, Mr. Chairman.
And all I would add is to also compliment you, Mr. Stokes, for your many years of work on this effort. I too stand somewhat in awe at the number of years of service and your contributions to this body.
REP. STOKES: Thank you.
REP. TURNER: And I know the Congress and the American people are grateful for the years of service you've provided not only on this issue, but on many other issues to which you've contributed.
And I also want to thank those who've served on this panel, because I'm sure it is a time-consuming endeavor to carry out this task.
Thank you, Mr. Chairman.
REP. HASTERT: Thank you, Mr. Turner.
Thank you, Mr. Stokes.
REP. STOKES: Thank you.
REP. HASTERT: The second panel, come forward, please.
Our distinguished second panel includes four witnesses: Mr. John Tunheim, the chair of the Assassination Records Review Board; Mr. Steven Tilley, the chief of the John F. Kennedy Assassination Records Collection at the National Archives. We also have Mr. Max Holland, the author and contributing editor of the Wilson Quarterly; and Mr. Bruce Hitchcock, an historian and teacher at Noblesville High School in Indiana, our distinguished chairman's home state.
And I also would say that, at this time, Mr. Burton would have wanted to be here to make a few comments. He is not here yet. We may entertain that at any time. So, if you gentlemen would please stand, and -- (witnesses are sworn in). Thank you. Let the record show that the witnesses answered in the affirmative.
And we start with you, Mr. Tunheim.
JOHN TUNHEIM (Chair, Assassination Records Review Board): Thank you, Mr. Chairman. I, too, would like to submit my written testimony for the record and

just give a brief summary to members of the subcommittee today.
I'd like to thank the subcommittee for this opportunity to testify today in favor of House bill 1553. And I'd also like to note our thanks to Congressman Stokes for his leadership on this issue and his guidance in the important effort to release the records relating to the tragic assassination of President Kennedy.
The review board is confident that the additional time requested and provided by Congressman Burton's bill will allow us to complete our work and submit a truly complete final report to the Congress, to the president and to the American public. I'd like to thank Chairman Burton for introducing the bill and Congressman Waxman and Stokes for co-sponsoring the bill that is before the subcommittee today. And I also appreciate, Mr. Chairman, your role in chairing this hearing today and assisting in this effort.
One of the other members of the review board is present with us today -- I'd like to introduce her -- Dr. Anna Nelson, who is the distinguished adjunct

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historian in residence at the American University and is seated in the row directly behind me. Dr. David Marwell, the executive director of the review board, is also here, as are a number of staff members who are very professional and very dedicated and have done their work for us very well.

The review board, Mr. Chairman, began releasing records in July of 1995, pursuant to the act passed by Congress. And thus far, the board has acted specifically to transfer more than 14,000 documents to the JFK collection at the National Archives. That collection, as Mr. Tilley will tell the subcommittee shortly, now contains more than 3.7 million pages' worth of material.

I'd like to show one brief and rather dramatic example of the work that the review board is doing. Congressman Stokes mentioned this issue in his testimony. This involves one particular record. This is the "before" version, the record that was available to the public up until several years ago. You probably cannot see it from here, but it is a document that was sent from the FBI's representative in Paris to Director Hoover on October 12, 1960. That is indicated at the top of the memorandum. The subject, as indicated, is Lee Harvey Oswald: Internal Security. And then it says Re: Paris Letter 9-27- 60. And the remainder of the entire document is blacked out. And not surprisingly, a document like this dated three years prior to the assassination of President Kennedy, a document sent to J. Edgar Hoover attracted a great deal of interest among researchers who saw it because everything was blacked out underneath. The speculation that individuals had about this was great.

Well, the board aggressively pursued the release of this information, initially ordering its release. The FBI appealed that decision to the president. Subsequently we worked out with them, including an aggressive effort to contact Swiss authorities who were the subject of this particular document. I met personally with the Swiss ambassador to the United States to ask for his assistance in obtaining Swiss approval to release it.

And here is the record that is now released to the American public at the National Archives. All of the material is released. And what it indicates was the FBI was interested in whether Oswald was indeed attending a college in Switzerland during that period of time. And the document tells about the investigation that Swiss authorities did to determine whether Oswald was, indeed, enrolled. He was someone who the FBI was following because of his interest in defecting to the Soviet Union. That's a good example of the type of work that the review board is doing: pursuing individual releases of information that has long been redacted from the public.

The board has worked closely with federal agencies. The vast majority of the records are at the CIA and the FBI. We have completed the review of the core collections in both of those agencies and significant numbers of materials have

been released.
The board has also been aggressive in identifying and acquiring significant assassination-related records that have been in the hands of private citizens and local governments. Just a couple of examples:
The papers of J. Lee Rankin, who was the chief counsel to the Warren Commission, have now been released through the efforts of the review board. Virtually all of the records of the prosecution in New Orleans of Clay Shaw was also released.
And I'm announcing for the first time today that the review board has just acquired the original personal papers of Clay Shaw. He was the individual prosecuted in New Orleans in 1969, the only individual prosecuted for the assassination of President Kennedy. That will add another dimension to this story. This is an example of his diary, which the board has just obtained, and will be released as soon as we can process the materials. It's very interesting. It's his diary from the day that he was arrested, on March 1st, 1967 and his feelings about Oswald on that particular day.

Despite the best estimate, Mr. Chairman, that this job could be done in three years, we cannot finish our work by the end of this fiscal year. We're confident that in the additional year we will be able to get through the records, which will largely involve the sequestered collections at the CIA and at the FBI -- records sequestered by the House Select Committee on Assassinations. I'd be happy to answer any questions, Mr. Chairman, that you and the members have.

REP. HASTERT: Thank you. We'll hold all the questions until the end of the testimony.

MR. TUNHEIM: Very well.

REP. HASTERT: Mr. Tilley?

STEVEN TILLEY (Chief, Access and Freedom of Information Staff, National Archives and Records Administration): Mr. Chairman, I am Steven Tilley, and I'm the chief of the Access and Freedom of Information Staff at the National Archives and Records Administration. And I wish to thank you for the opportunity to testify today on behalf -- for the National Archives in support of HR 1553.

I'm appearing today in my capacity of NARA's chief of the President John F. Kennedy Assassination Records Collection. In that role, I am charged with implementing NARA's responsibilities under the act, and I serve as NARA's liaison to the Assassination Records Review Board. And it's my understanding that my written statement will be made part of the record, therefore, I'll be brief in my remarks.

Mr. Chairman, this month marks the 20th anniversary of the closing of the office of the Watergate Special Prosecution Force. I oversaw the closing of that office and supervised the transfer of those records to the National Archives. Most of my career at the National Archives since then has been involved with working with sensitive records. And in 1993, I became the chief of the JFK Collection, and I've served in that capacity ever since.

When the review board members were confirmed by the Senate in April of 1994, my staff and I began to work with the board, and later with the board staff, to provide information on the records in the JFK Collection, the development and use of NARA's data base, our contacts and discussions with other agencies involved in searches for assassination records, and the existence of assassination records in the custody of private repositories or individuals.

The review board and NARA have maintained an excellent working relationship through the three years of the board's existence, and I'd like to think that this close relationship has in some way contributed to the success of the review board.

NARA enthusiastically supports passage of HR 1553 to extend the review board's authorization.

The board needs the time designated in this bill to complete its important work in making available as complete a historical record as possible concerning the assassination of President Kennedy.

I would like to briefly offer for your consideration some statistics and facts to demonstrate the success of the board. The JFK Assassination Records Collection has grown to more than 1,600 cubic feet of records, or approximately 3.75 million pages from more than 30 different government offices. These numbers are a testament to the work of the board in obtaining the cooperation of the entire federal government as well as private donors in this important task.

For the information of the committee, Mr. Chairman, I've attached to my testimony a copy of the register of the collection, which lists the major groups of federal records and private papers along with a supplemental listing of FBI records.

Not only has the collection increased dramatically in size; the significance

of the records in the collection cannot be underestimated. In addition to the records of numerous executive branch agencies and offices, the records of relevant congressional committees, related court cases, and records donated by private entities are also available in the collection.

This rich documentation is searchable electronically, giving researchers the ability to seek out documents concerning a topic, person or event, or even individual documents, not only at NARA's College Park facility but from their own personal computer through the Internet.

Finally, Mr. Chairman, public demand for these records is the ultimate evidence of the value of this collection. Reference requests have risen in number every year since the collection opened with new records in August of 1993. This year we have already received over 600 written inquiries, an increase of over 30 percent from this period of time last year. The number of inquiries on our computer Web site is also steadily increasing. Since March 1996, when the assassination records database was made available through the Internet, it has been accessed over 100,000 times by the public.

Due to the exceptional work of the Assassination Records Review Board, great progress has been made on making available as complete a record as possible in the history of the assassination of John Kennedy. Without the focus, integrity and expertise of the review board, the collection would not have the size, quality or public demand witnessed today.

However, there is still much to do. NARA supports passage of HR 1553 so this important work can be completed.

That concludes my statement, Mr. Chairman. I'll be glad to answer any questions.

REP. HASTERT: Thank the gentleman.

Mr. Holland?

MAX HOLLAND (Author, contributing editor of Wilson Quarterly): Thank you, Mr. Chairman. I'd like to make a brief statement summarizing my testimony.

Nearly 75 years after President Lincoln's assassination, a chemist-turned-author named Otto Eisenschiml provoked a national furor with his 1937 book, "Why Was Lincoln Murdered?" Eisenschiml claimed one of the most important events in American history was still a mystery. And Eisenschiml claimed to have uncovered the truth: President Lincoln was the victim of a conspiracy organized by his secretary of war, Edwin Stanton, who was allegedly opposed to the president's program for a charitable post-war reconstruction of the South.

When pressed, Otto Eisenschiml openly admitted that he had no evidence to support his case. At the same time, it was precisely the documentary record that enabled critics to prove that Eisenschiml's book was just another in a long line of lunatic theories about the first assassination of an American president.

Here lies, I submit, the long-term importance of the work being carried out by the AARB. The meaning of the raw data being unearthed by the review board will probably not be appreciated any time soon by the generations sentient when President Kennedy was murdered in Dallas, but if these generations cannot come to terms with history as it happened in their lifetimes, then at the very least, they have an obligation to hand over, insofar as possible, a complete and thorough documentary record. Citizens will need that record to rebut the Otto Eisenschimls of the next century, not that there is any dearth of them now.
I strongly support without qualification extension of the review board for another year and full funding of its operations. Bringing its work to an abrupt end would not only diminish the investment of time and resources already made; in all likelihood, it would throw the whole initiative into chaos. Not least of all, gutting the effort now would surely create ineradicable suspicion about the federal government's intentions in the first place. I'd like to spend the balance of my time describing the three areas where I thank the review board

had made its greatest contributions. The first has to do with the Warren Commission. The review board's labors have resulted in many new documents that I believe will eventually remove the stigma that has been attached to the commission, which is probably the most unfairly reviled and/or ridiculed entity ever created by the federal government.

These records paint a sobering portrait of our federal government during a very traumatic time. It's not the idealized versions depicted in civics text books nor the demonized version featured on talk radio. It's the real federal government: imperfect, plodding, riven by ambition, distrust, rivalries, compartmentalized by secrecy, working at cross-purposes or in ignorance, simultaneously guided by the most banal bureaucratic instincts and the most elevated national concerns. Somehow, through all of that, it does struggle and manage to do the right thing.

Besides the Warren Commission, I think the work of the review board has made a very substantial contribution towards understanding the operations of the intelligence community. The assassination necessarily caused what could only be termed a mobilization of the U.S. intelligence community's far-flung resources. The government had to determine that weekend who was responsible and whether the assassin or assassins had any co-conspirators either foreign or domestic. Consequently the records being released now constitute a gold mine of information about domestic and foreign intelligence operations at the midpoint of the cold war. These records not only shed new light on what the government knew 34 years ago; the release is an object lesson in why they were kept secret for all those years. They do not contradict the federal government's official conclusion at stated in the Warren report. Rather, the documents were kept secret because they disclosed or tended to disclose ongoing intelligence sources and methods.

With the release of these documents, the intelligence community's record in the wake of the assassination can finally be assessed with some fairness and thoroughness. The fact is that the information provided by the FBI, CIA and other agencies was instrumental to preventing the United States government from overreacting when the circumstantial public evidence was highly suggestive of a link between Lee Harvey Oswald and a foreign power.

The last area in which the review board has made a -- perhaps its greatest contribution has to do with whole issue of secrecy and disclosure. The balance between secrecy and disclosure has always been in favor of secrecy, especially since World War II, controlled by laws highly deferential to the equities of the interested government agencies. The five citizens who serve on the review board decided that if their mandate was to have any meaning it was imperative to pierce this veil. They had to get at categories that had been classified here

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before, including information derived from intelligence sources and methods. While some historians have been critical of the resources devoted to this particular effort, I like to believe that a breakthrough had to be achieved somewhere, and in fact, the records pertaining to President Kennedy's assassination make an excellent demonstration project of what can now be released. The lines drawn by the review board should prove helpful as the government undertakes to declassify the vast body of records generated during the Cold War.

Finally, I'd like to say the entire history of the federal government's efforts in the wake of the assassination, including the experience of the review board, serves as a cautionary tale. Perhaps it will enable the government to strike a better balance between secrecy and disclosure in the future, for there exists no better example of the heavy wages of doubt, suspicion and public cynicism exacted by secrecy than the Kennedy assassination experience.

Thank you, Mr. Chairman.

REP. HASTERT: I thank the gentleman.
And now, Mr. Hitchcock, I'd like to welcome you especially. A gentleman from Ohio asked me a little while ago if I was an attorney. Indeed, I was not an attorney, I happened to be a history teacher for 16 years before I ever got into politics. So it's certainly a noble trade, and happy that you're here. I know the chairman wanted to introduce you personally, but he couldn't make it this afternoon.
You have contributed students, I understand, a clerk for this commission, and have been involved in it at a very high degree. So we welcome you and listen to your testimony.
BRUCE HITCHCOCK (Teacher, Noblesville High School, Indiana): Thank you, Mr. Chairman. And I, too, would ask that my written statement be entered into the record and I will briefly summarize.
REP. HASTERT: Without objection, all written statements will be entered into the record.
MR. HITCHCOCK: Thank you.
My name is Bruce Hitchcock and I am a teacher at Noblesville High School located in Noblesville, Indiana, which is a community approximately 20 miles north of Indianapolis. I am currently completing my 28th year in secondary education. My teaching assignment has primarily been in the areas of United States history, American government, and international relations.

And I want to express my appreciation to the committee for affording me the honor and privilege of being here today and permitting me to make some brief remarks concerning an issue about which I have very strong convictions not only as a citizen, but as an educator.
In the spring of 1994, I assigned my Honors United States history class a project studying the assassination of President John F. Kennedy. This project culminated in the students placing the Warren Commission Report on trial. Half of the class represented the prosecution and half the class defended the Warren Commission Report. The class became quite interested in, and many would say obsessed with this subject. The project resulted in a trial which became quite intense and divisive, so much so that the class had to have a party at the end of the semester to rekindle friendships. They became so fascinated with the subject of the assassination that they requested an opportunity to travel to Washington, DC during the summer following their graduation to do additional research.
From that modest class assignment developed an internship opportunity with the JFK Assassination Records Review Board. To date, four student groups from

believe the government did conceal, continues to conceal, and will continue to conceal the truth. If the review board is permitted time to complete its work, it will assist in defusing the last two charges. We cannot prevent the speculation that someone did conceal the truth. But the argument that a cover-up continues, and will continue, can at least be defused, or discouraged. What has been lost cannot be replaced. However, what still exists can be made public. We should have access, and our students should have access to the information and documents still in existence. This is an opportunity for the United States government to provide a credible response to public interest. The review board established by the Congress, is actually a group of citizens telling the government what to do, and what to release. An opportunity exists, in this era of skepticism, to restore some credibility and trust in the government.

In his recent book, "The Approaching Fury," author Stephen B. Oates quotes John Furling as saying, "Events by themselves are unimportant. It is the perception of events that is crucial."

Perhaps in 1997, the most important aspect concerning the assassination of President Kennedy, is the perception, shared by many, of a conspiracy involving individuals and agencies of the United States government. Do we not owe our young people the opportunity to form the most accurate perception possible? Do we not owe them the chance to see as much of the truth intact as can be assembled?

It seems to me that we owe this generation, and all succeeding generations, the opportunity to question, to study, and to form opinions on the basis of information they can view independently, without solely relying on the opinions of others. Oftentimes, while I'm in the classroom, I observe students who have opinions, but little to substantiate them. Congress has a chance before it in some small way -- or maybe in some large way -- to at least provide them with more information, so that they may have their turn in determining what the JFK assassination means.

We have been affected by this event. For 34 years we have been affected. The 56 students from Noblesville High School have, as have countless others, been affected by the events of November 22nd, 1963.

The study of this event has the public interest. It is an event to which the public and students can relate. It touches people.

As an aside, last week an article was published in the Indianapolis Star. I have a copy with me today. Regarding our school's ongoing JFK assassination project. Within a day of its publication I received phone calls from a gentleman offering 500 pages of documents for our use. And from a former teacher calling me with information regarding some scholarship opportunities. I also received a call

from ABC News Nightline. And yesterday before leaving Noblesville High School received a call from Atlanta, Georgia offering information.

The subject of the call from Nightline was seeking information as to what Noblesville High School students were doing with regard to the study of the assassination. Together I think these calls reflect continued local and national interest in continuing the probe into what happened in Dallas. Congress has the opportunity to lay the facts before the American public and permit a more reasoned, rational and fact-based account and discussion of the assassination.
I would hope that the committee would take into consideration the fact that the review board had a one-year delay before truly becoming operational, that it is making a one-time request for an extension, that the review board has been on task and on budget, that the review board has conducted its business in a professional and non-partisan manner, and in 1992, when the act was passed by this Congress and signed by President Bush, the enormity of the task was not

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Noblesville High School have interned with the review board, with the fifth scheduled for the week of June 16th of this year. When this group completes its work, a total of 56 of our students will have participated in this unique and truly educational opportunity.

I might add that except for the first group, succeeding student groups have studied, researched and prepared for their internship on their own time, outside normal class meetings. The most recent group to participate did so over spring break. The fact that students wanted to spend their vacation working with government records reflects the interest that the JFK assassination has for students.

In my 28 years of teaching, I have never had a topic create as much interest as the assassination of President Kennedy. It is a mystery, and it provides an excellent research opportunity, as well as a chance for students to be actively involved in learning.

Since November 22nd, 1963, there have been many who have believed, and still

and could not be fully appreciated.
An opportunity exists to complete a task which I believe is overwhelmingly supported by the American public, and it is important that this mission and mandate authorized by Congress be completed. I would like to end with just a couple of quotes, one from former Senator Bob Dole, who said in a different context, this is not about only who we are. It is about have we made a difference. This is a chance to make a difference. And as former President Reagan often said, if not us, who, and if not now, when?
After 34 years it is time to let the public know the facts that remain. To do less would be a tragedy and a travesty. As an educator I believe that our most important task is to provide our young people the most complete story of who we are and why we are who we are. We have an opportunity to work towards the accomplishment of that goal. It is an opportunity, I believe, we cannot afford to miss.
In his last speech in Fort Worth on November 22nd, 1963, President Kennedy said, we would like to live as we once lived, but history will not permit it. History can only be served by permitting the public to see the evidence.
Mr. Chairman, as a further aside, if I might just have a few seconds. Reflective of our students' interest in this event, I have my honors government classes perform a project for the model Congress. One of the students this year -- they could write a bill on whatever subject they wished, and one student who worked with the review board last year introduced House concurrent resolution 1 in support of the review board, and concludes, after all the whereas's, the Congress of the United States firmly supports the assassination records review board in all endeavors leading to the collection, review and release of the documents regarding the assassination of President Kennedy and supports the extension of the life of the ARRB for an additional fiscal year.
Thank you, Mr. Chairman.

REP. HASTERT: We thank the gentleman and thank the panel. Now, I recognize the gentleman from Wisconsin, Mr. Barrett.
REP. BARRETT: Mr. Hitchcock, can you give us the name of that student so we can make him or her an honorary co-sponsor? Might as well get the name in the record.
MR. HITCHCOCK: Abigail Meyer, M-e-y-e-r.
REP. BARRETT: Judge Tunheim, you mentioned that you were releasing some materials from Clay Shaw's diary and perhaps other things. Is there any information in here that you find particularly interesting?
MR. TUNHEIM: Mr. Barrett, I've not had a chance to go through it. We've just gotten these materials in the last week through some aggressive efforts on our

staff. The page that I cited to you is interesting in that he made the notation in there and it's a portion of it in his own handwriting that it was perhaps unfortunate that he had never met Oswald because then he might have possibly been a tiny footnote in history, an ironic statement given the role that he played in the trial.

We've not had a chance to analyze it thoroughly yet. It does contain his reactions to events as they were going on around him during the course of the prosecution and certainly supports his view that he was not involved whatsoever in the assassination, which ultimately was the view of the jury that acquitted him.

REP. BARRETT: For my benefit, as a person who has not been immersed in this issue at all. You just mentioned it took some aggressive work from your staff to get this released. Can you tell me what that entailed, where it was, why it was so difficult to get this information?

MR. TUNHEIM: Certainly. Part of this, this is an investigation into where

records are. The bulk of our work has been with federal agencies that hold assassination records. But we've also, at the direction of Congress in the bill that was passed, entertained a search for records wherever they might be. Records that are in private hands are not records that we can subpoena and take from people, so we have to find where they are.

Staff members go out, talk to people, encourage them to donate those records to the American public, to the National Archives. That was done in this case. We received a tip that an individual had records that were left over from Mr. Shaw, and staff went and talked to the person, spent time with the person, encouraged them to share those records with the American public, and that's how it was developed.

REP. BARRETT: How do you determine which assassination records you can disclose now and which just have to wait?

MR. TUNHEIM: Well, there's a standard that's set up by the act. There's first of all a presumption that all records should be public. That presumption has governed what the board has done throughout the process. But then there's a standard where the board has to weigh the public interest in a particular record or information with the potential harm that might be caused by release of the material.

The standards that we look at are, are there national security interests such as disclosure of an intelligence agent whose name hasn't been disclosed and whether that person perhaps may be in some danger if that name was released publicly. Does it disclose a method of protecting the president that is not generally known today, so therefore it might be a threat to the president. Are there personal privacy considerations that are involved.

I will tell you that when all is said and done, a very, very tiny percentage of information gets redacted under the standards that we are applying, and the process of going through the records has led the board to arrive at a number of policy decisions which the agencies by and large are now following in their own review of records, and therefore decisions that we had to make two years ago now we don't have to make because the agency is following the advice of the board made on earlier records.

REP. BARRETT: As long as there are some records that are not being released, do you think that we will inevitably face criticism from some people in the American public that there is still some sort of cover-up? I make reference to Mr. Holland's comments about a book being written 75 years after President Lincoln's assassination.

Will the time ever come, do you think, when all records will be released?

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MR. TUNHEIM: I think it will, Mr. Barrett. The board is releasing every record. The question is whether certain information on these records gets redacted or not. For every redaction we are attaching a specific release date. Some of the dates are five years in the future. The law that was passed which established the review board provided that all records that are redacted, all information redacted will be released in 2017 unless whoever is president at that time makes a specifics determination that the record cannot be released because of some continuing national security concern.

So we expect that virtually all of the information by 2017 will be released but a very high percentage, in the 99.999 range is being released right now.

REP. BARRETT: Mr. Tilley, in your written statement you indicate that the collections currently consist of 3.75 million pages. What's your estimate of how many more records need to be reviewed?

MR. TILLEY: Well, it's hard to say because there is still a good deal of material that's being reviewed by agencies at this time. But we have located

some records at the National Archives that are still under review, such as the Secretary of Army's records dealing with Operation Mongoose, the campaign to destabilize the Cuban government in the period after the Bay of Pigs.

Other records have been located at other agencies. I received a call from the Customs Bureau today and they will be turning over their assassination records to me hopefully this afternoon. After this hearing is over I'll be picking up the records they've located.

So it's tough to say how much is still out there but I think there's still going to be another considerable amount of material, probably will be added to the collection before this process is finished.

REP. BARRETT: Millions of pages?

MR. TILLEY: Oh, no. I would say probably, if we had another half a million pages, that might be the extent of it. But what's interesting and fascinating about this process is that we continue to turn up records where we did not know there were records before. As agencies are aware of this effort, they have come to the board. And the board is responsible for a lot of this by their aggressive work with federal agencies. But I don't see us ever doubling the collection again, but I think we will add a significant amount of material in the weeks and years ahead.

REP. BARRETT: Thank you. Thank you, Mr. Chairman.

REP. HASTERT: Mr. Tunheim, I have just a very short question. You mentioned the movie that came out, JFK, and Mr. Oliver Stone's work in there. Did Mr. Stone ever have any questions of your work at all, or did he do research?

MR. TUNHEIM: Mr. Stone has been very supportive of the work of the review board. He testified before the Congress when this bill was passed initially, encouraging broad release of the records. He sent a representative to one of our public hearings who testified and spoke very favorably about the work of the board. So he's been strongly supportive and we've appreciated that support.

REP. HASTERT: Why have you waited to this point in the process to begin reviewing the CIA and FBI records?

MR. TUNHEIM: Well, we've been reviewing CIA records and FBI records from the very beginning, Mr. Chairman. The volume of records in those agencies is really significant. We have completed the entire review of the core collections of those agencies and those are numbers, between the two agencies, it's more than a million pages of records.

What we are doing right now are delving into what's called the sequestered collection in both of these agencies. Within the CIA these are records that the House Select Committee on Assassinations asked to be sequestered, taken away from their files and kept in a secure place for future review. The House Select Committee did not have time to review these records carefully. Some of them are

highly relevant to the assassination, others are not. Within the CIA there are about 62 boxes of material and 72 reels of microfilm.

In the FBI in the same kind of sequestered collection is about 280,000 pages of records. Those records are the focus of the review board's work over the next year, if we get the extension.

REP. HASTERT: Let me ask the same question I asked the previous panel. Do you think that you can finish your work by the end of the fiscal year 1998?

MR. TILLEY: Mr. Chairman, I'm confident that the board can complete its work. Members of the review board are confident. We will make every effort to ensure that it gets done. In fact, we intend to provide to your staff a timeline which sets out our anticipation of how we will review these records over the next year.

We have set up a review process that we're working on right now that's moving quickly and we are confident that the work can be done. We were set up to be a temporary board and no one on the board wishes this effort to take a long

time. We need to get the information to the American public.
REP. HASTERT: Thank you very much. Mr. Hitchcock, I want to ask you, bringing students into the real realm of research and learning in that respect, how important is it that records like this be made available to the public so that folks like yourself can have the availability for students?
MR. HITCHCOCK: I think, Mr. Chairman, it is extremely important for not only teachers of history and historians but also for future students and future generations. One of the things so special about our relationship with the review board has not only been an opportunity for students to travel to Washington, and they pay their own way and they do their own research on their on time. But it has helped change opinions in many cases by students about not only the assassination but about government, politics, agencies and people who work for the government.
I cannot overstate the importance this has had for the 43 thus far, and soon to be 56, students from Noblesville High School who have had this research opportunity, that have been able actually to see, handle original documents, to work with documents, to see firsthand the evidence that exists. To have that opportunity is something that no teacher, no classroom, no film, no laser disk, nothing in the classroom can simulate such interest and focus as this trip to Washington DC, the review of documents, the working with people that we've had the opportunity to be with at the review board on a firsthand basis.
It is just something that cannot be duplicated, or as I said, simulated in any classroom anywhere in the country. It's just been a fantastic opportunity and will provide students in the future with a place to go to find those records, to look at the records, to look at the documents, and be at least assured that as much as is available and is in existence can now be made available to them as ordinary citizens of this country, whether they be students at a university, students at a high school, or in their just curiosity and interest as American citizens.
I don't think it can be overstated the impact that this will have in helping bridge that gap of skepticism, if this is the correct way to say it, that exists. I just cannot imagine what the many conspiracy theorists out there would think if the review board has to finish its stay without completing its work.
REP. HASTERT: Thank you. The gentleman from Ohio.
REP. LATOURETTE: Thank you, Mr. Chairman.

And Mr. Chairman, I would begin by indicating that my earlier query about your legal training was not meant to be an affront, and I should have recognized that your learned demeanor was that of a --
REP. HASTERT: Not at all.

REP. LATOURETTE: Mr. Howe, I don't have a question but I'm glad you told the story of Otto Eisenschiml because somewhere in the back of my mind I remember a book or movie called the Lincoln conspiracy and I was certain that Secretary Stanton had something to do with the demise of our sixteenth president, so I'm glad you brought that up.

Mr. Tunheim, I do want to ask you a follow-up question to what we were talking to Congressmen Stokes about and I was fascinated by the document that you held up. When I was in the prosecution business and we had a public records law in Ohio which was new on the books, we found that law enforcement agencies always wanted to take a big black magic marker and redact everything. It was my view that that led to more conjecture, rumor, suspicion than not, and I think this document that you brought forward, knowing that it came from the Swiss federal police, that would give, I think, some cause to believe that Mr. Oswald had some Swiss bank account and was squirreling away money from foreign nationals as part of a conspiracy.

When you un-redact it, if that's really a word, you find out like so many other people he apparently registered for the Albert Schweitzer College for the fall semester of 1960 and didn't show up. Nothing sinister or unusual in that at all.
The question I have is, when you were testifying you indicated that the FBI originally appealed the decision to not--or to withdraw the redaction of this particular document. You also indicated that the vast majority of documents that you have left to review during this renewal period are located at the CIA and the FBI in the sequestered section, I assume.
Are you any unusual difficulties with either of those agencies in terms of cooperation as you attempt to get to a public release of what should be appropriately publicly released?
MR. TUNHEIM: Well, Mr. LaTourette, the answer -- the question is, no, we're not receiving any degree of difficulty with those agencies right now. They are committed to this process. They are supportive of the effort to keep the process going for one additional year.
The CIA has not appealed decisions that the review board has made. We've got a good working relationship with the people within that agency who are doing their work. The FBI appealed a significant number of our decisions, but now all of those appeals have been withdrawn. And we've got a working relationship with the FBI that I think has been constructive and professional and is working quite well.
The FBI initially opposed release of the document that I held up and appealed the decision because they had contacted, in a general way, the Swiss federal police and asked whether this record could be released, and the answer was no. Our follow-up through the ambassador is showing what really this document was all about, led to some wiser approach to the particular issue. And sometimes it takes additional work like that to accomplish the release of important materials.
REP. LATOURETTE: And the last question I would have is Congressman Stokes expressed the view that perhaps the fine work of this review board -- should another review board setting be required in the future to review another situation similar to this, that you may be breaking down some of the barriers in terms of suspicions that the intelligence community may have about do we need to, you know, stick to the script and have a page that has all black magic marker on it? Do you find that the lessons learned in this review board will be instructive to us as we move forward and think of ways of dealing with the release of documents in the future?
MR. TUNHEIM: I think that's a very good question. And we have found through this effort, being the first group, an independent group outside of an agency, to have this degree of control over the declassification process. The process

at first was rough and difficult and fraught with suspicion. That has changed. There's been a sea change as these agencies have realized that release of this information is not going to harm our national security, that perhaps it's time simply to trust the American people with access to important information about their government. And I think everyone has learned important lessons from this process. It's a process that, while time- consuming, has worked very well for this set of records.

REP. LATOURETTE: And in that regard and in that vein, have you at the review board put together sort of an instruction or an operating manual to be left behind for future such endeavors?

MR. TUNHEIM: Well, we certainly will. We have -- virtually all of our work has been computerized so that we have an extensive record of exactly how we've approached all these issues. We do intend, in our final report, to make recommendations on how this effort can be extended in the future to other areas if the Congress so wishes.

REP. LATOURETTE: Thank you for answering my questions. Thank you for your fine work. And thank you, Mr. Chairman.
REP. : Thank you. I had a couple of questions. I read your testimony as I was listening to the other two. I'm sorry I was late. I wanted to ask Mr. Holland; were there credible historians who at this point were still questioning the assassination in the Warren Commission and the information that came out before this commission existed, before these documents came out?
MR. HOLLAND: Basically, most historians have stayed away from it because they regard it as a tar baby. So there are actually surprisingly few. By historians, you mean professors at universities. Surprisingly few have written about it, because they just see it as a morass, and how are you going to possibly figure out what happened? So my answer would be -- and, you know, credible is in the eye of the beholder.
But there's actually remarkably few, and that's one of my arguments is that you have to -- it is time to insert it back into history. It did happen during the Cold War, and that exerted a tremendous influence over what the government did. Right after the assassination, it was a precipitating element of the formation of the Warren Commission that the Cold War was ongoing, and they worried about -- to be frank, they worried about congressional committees holding hearings and disclosure of sources and methods, such as the fact that Oswald had gone to Mexico City and been observed by photographic surveillance, and how was that going to be handled by a congressional committee? So I do believe it has to be inserted into historical context. That's probably been the element that's been missing all this time.
REP. : So you believe one of the elements of this commission is it'll bring out of pulp -- pop culture -- pulp culture was a bad choice of words -- pop culture and in more mainstream because more documents are there, less questions. It can now be analyzed. And also, you seem to hint that we'll gain as much, not necessarily that there's a lot of new information on the assassination, but that we're going to learn a lot about how our government worked and a lot of the interrelationships, and that may be, in fact, more use to the historians than any questions they had remaining about the assassination.
MR. HOLLAND: I think -- my own particular view is that besides, you know, being an investigation of three crimes -- the murder of President Kennedy, the assault on Governor Connally and the murder of Officer Tippett (sp), and then the murder of Oswald, so four crimes -- the Warren Commission is a fantastic lens to view the operation of the government circa 1963-64, because they had an overriding mandate.
But yet they were going up against agencies such as the FBI and CIA with

entrenched interests, and especially Hoover's FBI was sort of a wonder to behold. You dealt with it very gingerly. So it's a great -- and the FBI had not been second-guessed since Hoover became director. This was the first time. And you can't underestimate what that meant in terms of the difficulties it posed for the commission. Now, I maintain they still came to the right conclusion, but the fact is that they had a lot of trouble with the FBI.

REP. : One of the questions here is it took so many years to get to this point. In looking at what future commissions might do, how much of that, do you think, can be overcome? In other words, how much of this was the Hoover FBI, say, and how much of this is institutional that in the first 10 years you'd have so many agents active in the field, ongoing operations, in the first 20 years there's still some -- can we accelerate the process?

What have we learned from this as to -- obviously this is one that particularly anybody in the '60s era was a defining event, so it's an extraordinary assassination. But what have we learned for investigations in the future? Do

you believe the CIA and FBI will release information sooner? And if so, presumably they'll still be redacted, which still could lead to Oliver Stone movies and Lincoln conspiracy books and all sorts of things.

MR. HOLLAND: Mr. Chairman, I think that the fact that these records are 30 years old has helped in obtaining their release. It's not information about the assassination per se that agencies have objected to releasing. It's more who said what to who, who's an intelligence agent and who's an informant for the FBI, those kinds of issues. And there will still be institutional reluctance to release any of that information.

I hope that through this process we can demonstrate to the public and to these agencies that this information can be released to the public, that the public can be trusted with information like this. There will still be a need for secrecy to a certain extent, but certainly not with the broad brush/black pen approach of the past.

REP. : We first learned -- I was elected in '94, and our first experience in this committee was with Waco, where we had similar questions and still had some information that wasn't able to be released. We're certainly having that ongoing debate with the administration right now, because it gets far beyond the initial investigation. In the course of Travelgate we discovered the data bank. And, of course, with the data bank you discover the code, and then you find out that the code leads to this. Pretty soon you're off into other investigations. That's going to be an ongoing problem. Do you believe, in the end, that this will have silenced most critics?

MR. HOLLAND: In my view, Mr. Chairman, it will silence some. It will perhaps provoke others.

We're many years after an event that was investigated in a different era. There were many mistakes made at the time that cannot be corrected at this stage in time. But I think when the review board is done with its work, one thing we should be able to prove to the American people is that the federal government is no longer keeping secrets from them relative to the Kennedy assassination. I think that will be a very significant development.

Whether all the questions will be resolved or not, that's a question for historians in the future who will review these materials and will make their determinations. This is like a gigantic puzzle with a lot of pieces missing. We are putting some of those pieces in, small pieces and large pieces. But there's a lot of pieces of the puzzle that will never be found.

REP. : I want to ask one last question, and that's options of dealing with acquiring the Zapruder film. Is that going to be a cost additional to what you're requesting? Do you have options on how to pay for that? What's the

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status of that?
MR. HOLLAND: Well, the Zapruder film, as the chairman is aware, the review board designated that as an assassination record about a month or so ago. We felt that that decision was determined by the Congress in the passage of the JFK Records Collection Act when it said that all records in the possession of the National Archives are assassination records and should be included in this collection.
Recognizing the potential cost of a film like this, we did set forth a 16-month period before the taking would take place, so that the Congress could address this issue and make appropriate determinations that the Congress wished to make those determinations. The board did feel that that decision had been made for it by the Congress in the earlier act and that it is the most significant piece of evidence of one of the most significant crimes in our nation's history. So, therefore, the original has an intrinsic value, and it should belong forever to the American public.

We are hopeful that the Zapruder family will agree eventually to donate that film to the American public. We have no assurances of that at this point. But we did set the time frame far out in the future so that the Congress can review this issue and make its own determinations if it so wishes. REP. : Do you have any additional questions? With that, I thank you all for --

REP. LATOURETTE: Mr. Chairman, if I could beg your indulgence and just ask one more question, if I may.

Mr. Tunheim, if I might, my previous question about difficulty with the CIA and FBI. Sometimes I don't make things broad enough. And I guess my query would be, it's been brought to my attention that perhaps there's been some difficulty in obtaining records from the other body. Is there any agency within the federal government that you're having difficulty in terms of cooperation that would impede your ability to complete your work in a timely fashion, as envisioned by this legislation?

MR. TUNHEIM: Mr. LaTourette, I have not seen any evidence currently that anyone is deliberately stonewalling us, so that when we go away, they will put the records back into the files. We had some significant problems early in the process, just really because agencies didn't understand what this was all about and didn't understand what the law really provided for. So it took some time. It's taken some time, for example, with the Secret Service to get them to the point of realizing their obligations under the act. They do now, and they've been very cooperative and easy to work with. But this has been a learning process for all of the agencies, and I feel at the current time there are no impediments among any of the agency partners that we're dealing with to completing the review of the records on a timely basis.

REP. LATOURETTE: Thank you. I thank the chair for your indulgence.

REP. : I thank you all for your testimony and appreciate your coming today. For procedural purposes, I'll now close this hearing -- the hearing is adjourned -- and open a subcommittee markup on HR 1553, markup of the John F. Kennedy Record Review Board Reauthorization Act. The hearing is now open.

If there are no opening statements, the subcommittee will now proceed to the consideration of the bill as amended. Without objection, the first reading of the bill is dispensed with and the bill will be considered for amendment at any point. Do any members wish to be recognized to offer an amendment? Hearing none, the question is on favorable reporting of the bill, HR 1553, the John F. Kennedy Assassination Records Review Board Reauthorization Act. All those in favor say "Aye."

MEMBERS: Aye.

REP. : Opposed, "No." In the opinion of the chair, the ayes have it. It goes fast. The question now comes, will the subcommittee report the bill to the full

committee? All those in favor, say "Aye." MEMBERS: Aye.
REP. : Opposed, "No." In the opinion of the chair, the ayes have it. The bill moves forward to the full committee. There is no other business before the subcommittee. We now stand adjourned. Thank you all for your hard work.
~END~